

Land in the Struggles for Citizenship in Africa

Le foncier dans les luttes pour la citoyenneté en Afrique



Edited by / Sous la direction de
Sam Moyo - Dzodzi Tsikata - Yakham Diop

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This book is a product of CODESRIA Multinational Working Group.

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Sam Moyo

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Council for the Development of Social Science Research in Africa
DAKAR

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Introduction

Africa's Diverse and Changing Land Questions

Sam Moyo, Dzodzi Tsikata and Yakham Diop

The variety of land questions facing Africa and the divergent strategies proposed to resolve them continue to evoke debates. An overarching concern is the extent to which land rights are being commodified, through the conversion of land held under customary tenure systems into marketised systems. The consequences of this include growing land concentration, land tenure insecurities, diminishing access to land by various sections of society, including the poor, women and less dominant ethno-religious groups. Gender and class-based inequalities and even exclusion from access to land is a growing problem (Wanyeki 2003; Moyo 2008; Tsikata 2009). Urban and rural poverty in Africa is determined, among other things, by food insecurity in largely agrarian countries which are pervasively dependent on food aid and food imports. Various political and civil conflicts (such as in Zimbabwe, Ivory Coast, Sudan and Kenya) are associated with historical grievances and contemporary disputes over the control of land, natural resources and minerals (see Mamdani 2009).

The land questions vary in different African countries according to their historical specificities, including their diverse patterns of colonisation, ecological and demographic transformations, their development trajectories and democratisation processes. Specifically, varied forms of colonial land laws and regulations, land expropriation, labour regulation and migration, and the failure to achieve national integration shape the land question in a context of limited agrarian transformation and jobless urbanisation patterns (Amin 1992; Mafeje 2003; Moyo 2008; see also Adetula in this book). Some common tendencies, particularly regarding mechanisms which drive inequalities in the control of

land, are discernable, as the studies in this collection show. Popular struggles for access to land for various purposes, while mostly isolated and localised, are not uncommon in most countries (see Rajeev Patel in this volume).

At the height of the structural adjustment programmes during the 1990s, most African countries faced renewed pressures for land tenure reform, as part of the package of deregulating domestic markets and investment policies, and trade liberalisation. By 2004, over 20 African countries boasted of reformed National Land Policies, with fairly homogenous legal and administrative postures, intended to enhance market transactions in land (Manji 2006; UNECA 2004). The orthodox view (Deininger 1999; World Bank 2004) remains that the absence of clear tradeable landed property rights limits 'tenure security', and constitutes a fundamental barrier to investment and development (see also Bezabih Emana and Assefa Seyoum in this collection). It has been argued that the absence of private property rights in land means that Africa's is sitting on dead capital (de Soto 2010; Richardson 2005).

The other view is that market-based land and agrarian reforms have inordinately focused on foreign investors at the expense of balanced domestic investment (Olukoshi 2004) and of developmentalist agrarian policies (Mkandawire and Soludo 1999). Tenure reforms are considered to reinforce incipient processes of land concentration in a number of African countries (Moyo 2008; Moyo and Yeros 2005; Kanyinga 2000; Rajeev Patel and Issatou Touray in this collection). Many land tenure reforms tend to entrench excessive and unaccountable central state authority over land, including through re-engineered but disempowering 'decentralised' systems of land governance (Shivji 1998), which are mainly upwardly accountable (Amanor 2008). Land policy making in many cases reflects a political 'balancing in favour of the more powerful social forces' in order to advance capital accumulation and dependent global integration (Moyo and Yeros 2005).

Archie Mafeje (2003) has questioned whether Africa, outside the former settler colonies, really has a land question, suggesting instead, that the key issue is the continent's unresolved agrarian question. The significance of land concentration in countries (such as Malawi) with multitudes of small landholding families that produce 'successfully' has also been queried by others (Eyolf and Mvula 2008). Low levels of agricultural productivity and inadequate food production are indeed almost universal on the continent (see FAO 2008). The recent world financial and economic crisis, preceded by food shortages and price hikes which peaked in 2008, highlighted this source of Africa's vulnerability in world food markets. Africa's continued agricultural export orientation can also be considered to represent a misallocation of agricultural resources, rather than a land question.

The marginalisation of poor rural producers, particularly women, and urban working peoples, from secure access to land within cities and the countryside is well documented (see Amanor 2008; Kanyinga 2000; Tsikata 2001). The creeping

problem of landlessness alongside land concentration, outside of settler Africa, cannot be denied (Moyo 2008; Amanor 2008). Post-independence excisions of land from customary areas by the state for public enterprises and the elites (Baye and Khan, in this volume) and the increased social differentiation of landholding among the growing family farming populations, has become common (Amanor and Moyo 2008).

One of the responses to the recent 'food price crisis' has been a new scramble for land in Africa, ostensibly to produce food and bio-fuels for export, mainly using the large estate production model (Moyo 2008). At least five million hectares have been concessioned to 'foreign investors' in over 20 African countries (Von Braun and Meinzen-Dick 2008; Cotula, Vermeulen, Leonard and Keeley 2009; Thompson 2008; Tabb 2008). Such investors are from the USA, various European countries, China, South Korea, the Gulf States and Brazil (Grain 2008; Petras 2009). This trend raises concerns not only about land alienation and concentration, but suggests the entrenchment of the continent's re-colonisation, within the emerging east-west global polarity.

Nonetheless, it has been argued that Africa's land debates are excessively 'agrarianist' (Adetula, in this volume), as they underplay critical urban land questions related to high rates of urbanisation characterised by extensive homelessness and informal settlement (Simone 1998). The recurrence of xenophobia in South African townships and notably in Nigerian cities (see Adetula; Oruwari and Owei; in this volume), for instance, highlights this concern. However, this 'rural bias of the land question' thesis, underplays the effects of persistent semi-proletarianisation and jobless urbanisation on persistent demands for access to rural and urban lands for agriculture a based livelihoods (Moyo and Yeros 2005). Not surprisingly, the contributors to this volume suggest that Africa has both land and agrarian questions with rural as well as urban dimensions. Access to and secure utilisation of land is critical to wider processes of social reproduction and accumulation within urban residential, industrial and other social spaces, and within rural areas in relation to farming, non-farm enterprises and natural resource extraction.

The control of land (including its allocation and utilisation) does contribute to the definition of territoriality and sovereignty, as well as belonging and citizenship. Land is considered a social or cultural marker (Adetula; Tati; in this volume), within the agrarian and urban realm, transecting gender and other social arenas. The quality of citizenship and democratic rule in Africa can, in part, be gauged from the extent to which land rights are protected irrespective of class, race, gender and ethnic difference. The legitimacy of the state is often embedded in the quality of its land administration and adjudication of land conflicts. Ironically, given the shallowness of formal land markets in Africa, the state is pervasive *de jure* in the regulation of access to land and protecting land rights, although *de facto*,

its physical reach is in many instances limited, but not to be under-estimated. Unresolved land conflicts reflect the ineffective role of the state in mediating competing demands for land not only of external versus national actors, but also of different classes, genders and other social groupings (Wily and Hammond 2002; Ubink and Amanor 2008; Lentz 2006; Tsikata 2009). Understanding the role of the colonial and post-independence African state in land management is critical to assessing Africa's land questions.

This volume of studies on Africa's land questions explores the emerging land issues on the continent in terms of the wider questions of development, citizenship and democratisation. Three of the chapters cover francophone countries while the rest address anglophone experiences. The bulk of the cases are on West Africa, while two are from East Africa and one from southern Africa. Their disciplinary orientation also varies and includes economics, political science, anthropology, law, history, sociology and geography. The chapters discuss the land question through a variety of themes discussed in this introduction. The chapters by C. Otutubikey Izugbara and Isatou Touray focus on the gender dimensions of the land question, with particular reference to the organisation of women's demands and protection of their rights. Three of the chapters (by Rajeev Patel; Francis Menjo Baye and Sunday A. Khan, and Yomi Oruwari and Opuenebo Owei) focus their attention on the diverse range of land movements that are found on the continent, revealing their varied strategies and tactics and forms of organisation. The chapters by Victor Adetula, Gabriel Tati, Francis Menjo Baye and Sunday A. Khan and Abderrahmane Ngaide, are mostly concerned with the emergence of complex ethnic and religious identity-based forms of mobilisation over land as a result of large-scale migrations. Abdoulaye Zonon and Bezabih Emana and Assefa Seyoum focus on emerging land markets and their implications for gender equity in land tenure, while Aboudou Ramanou tackles land tenure issues in peri-urban areas or secondary cities examining the inability of state authorities to manage land tenure in peri-urban areas. In general, a number of the studies interrogate state land policies, and their implications for citizenship, national integration and democratisation.

African Land Questions in Historical Context: How Unique?

One salient feature of the debate on Africa's land questions is whether they are unique compared to other parts of the world. Amin (1972) categorised Africa into three zones: settler Africa, Africa of the '*economic de traite*' and concession Africa (see also Bernstein 2005). Certainly, differentiated land holdings are common in Africa, with lineages of founding settlers and conquering warriors holding large tracts of land and retaining influence over land allocation (Alie 2004). The extraction of surplus value by landholding families from other land users, through primitive forms of ground rent and/or forms of 'bonded' labour

services and sharecropping occurred but was not widespread. Various forms of tributary rule were not uncommon (Amin 1972). These extracted small parts of the product from otherwise independent producers through wider societal hegemony. These exploitative practices were considered contributions to social projects (e.g. the king's fields and granaries).

An essential distinguishing feature of the African land question outside settler Africa then is the resilience of the lineage-based mode of rural social organisation throughout the periods of indirect colonial and post-independence rule (Mafeje 2003). Most rural African societies remain structured around lineage-based social structures of political authority and social organisation. Land tenure was founded on recognised membership and the universal allocation of usufruct rights to families (both pastoral and sedentary) of given lineage groupings (Ibid). Land rights were also extended to assimilated 'slaves' and migrant settlers (Mamdani 2001). African households held land and mobilised labour relatively autonomously of ruling lineages and chiefs. Production was mainly for own consumption and secondarily for wider societal projects, while long-distance trade occurred (Mafeje 2003).

'Indirect colonial rule' partially modified the organisation of peasant societies, through legislative and administrative changes to the procedures of customary rule, including leadership selection and land tenure systems (Mamdani 1996; Cheater 1988). Customary systems of authority over unalienated land were retained under trusteeship laws promulgated by the colonial and post-independence state. Land law was based on customary and statutory precepts, and permitted the appropriation of customary lands for state agricultural production, infrastructure schemes, public reserves (forests, parks etc), and for allocation to various foreign settlers and local 'elites' and to create towns.

Indirect colonial rule, mostly extended the extroversion of African production of primary goods, and entrenched surplus value extraction, through the colonial state's control of markets and the use of extra-economic forces (see Shivji 2009). Peasant production evolved towards generalised petty commodity production (Bernstein 2002; Graham 1993; Agbosu et al 2007), under state-controlled financial and commodity markets, and infrastructural investments (Shivji 2009). Migrant labour was channelled particularly towards colonial centres and export production enclaves (Amanor 2003), creating new forms of land holding and labour relations. In non-settler Africa, migration processes entailed various forms of assimilative relations with regard to land, such that land and labour relations of production largely remained under the control of indigenous rural producers.

In settler Africa (mostly in large parts of southern Africa and some countries in East and North Africa), extensive land expropriation initiated a proletarianisation process (Arrighi 1973), which eventually amounted more to semi-proletarianisation (Sibanda 1988; Moyo and Yeros 2005). Here, large estate farming schemes and institutionalised labour migration systems undermined the

land rights of labour and generated large-scale landlessness and land shortages, while creating new forms of property rights, based on markets for settlers and capital and, alienated and unalienated state landholdings.

Decolonisation highlighted nationalist grievances and struggles for sovereign control over land and other resources. Even in non-settler Africa, given the colonial states' hegemony over land, national independence promised the resolution of Africa's national questions of territorial and social integration, socio-economic development, and democratisation, as well as the legacy of colonial state control over land. Negotiated political independence settlements left these national questions and land inequalities unresolved until the late 1960s. The nationalisation of colonial, foreign and settler landholdings was pursued between the 1960s and 1970s (e.g. in Algeria, Zambia, Tanzania, Mozambique and Angola). Even in those countries which experienced minor degrees of colonial state land expropriations (e.g. Swaziland and Botswana), those lands were compulsorily reacquired, using market-related compensation, with some funding from the colonisers (see Simelane 2002). Repossessed lands were 'indigenised' as large-scale farms or estates, while new large farming estates were created, by excising land from customary tenure areas, for state farming or private entities. The estates were gradually privatised from the 1990s (Chachage 2009)

Today, this historical dichotomy, between the non-settler and settler African land questions largely remains, although in some regions of non-settler countries, intensive but localised forms of land alienation and concentration have been on the rise (Moyo 2008; Peters 2007; see Baye and Khan in this book). Until recently, these processes represented neither large-scale land alienation processes nor widespread landlessness or full proletarianisation. Rather, a diffuse but socially significant structure of land concentration and the marginalisation of substantial groups of small producers has taken hold, and in some countries this has gained political significance by fuelling high-profile land conflicts.

The retention of large populations of small agricultural cultivators and pastoralists, alongside processes of semi-proletarianisation, means that African rural or agrarian societies are characterised by numerous independent small family landholdings and production based on diverse agricultural production and land use systems, related to varied location-specific agro-ecological and economic conditions. The scale of available arable and irrigable land is itself not limitless.¹ Moreover, the growth of African towns was largely based on the appropriation by the colonial and post-colonial state of land for public urban uses and to create real estate markets. This enhanced evolution of land markets in urban areas, which have become the fulcrum of land commodification, has generated numerous urban and peri-urban conflicts (see Oruwari and Owei; Rajeev Patel; Ramanou; in this volume). The recent scramble for land for agriculture, natural resource extraction and urban development raises the spectre of a more widespread land commodification process.

Land Tenure Reforms and Land Markets

Land Titling and Registration and the Growth of Land Markets

The issue of land tenure security has received widespread attention in debates on land in Africa. Both colonial and post-independence African governments had been preoccupied with the conversion of farming areas under customary land tenure into individual freehold and leasehold title in both rural and urban areas and to establish land markets. The dominant discourse about customary land law had considered it moribund and inappropriate for the development aspirations of sub-Saharan Africa, at a time when import substitution industrialisation was the dominant development approach. A gradual shift emerged from the late 1980s in favour of customary law, which was now found to be dynamic and flexible and able to deliver efficient production for national development (Bruce and Migot-Adholla 1994; see Whitehead and Tsikata 2003).

From the early 1990s, several countries in West and East Africa increasingly pursued land registration as a step towards creating land markets (Delville et al 2002) under the sponsorship of donors such as the World Bank (Platteau 1996). When empirical evidence showed that customary tenures did not markedly perform worse in terms of agricultural investment than freehold tenures (Migot Adholla 1994), the tenure debate shifted towards 'local rights recognition' (Delville et al 2002). Some countries in East Africa began to provide some legal recognition to indigenous customary land tenure (Bruce 1996).

Indeed, the World Bank from the 1990s wrote in favour of an evolutionary approach to tenure reform (see Deininger 2003). Demographic pressure increases were expected, over time, to generate market-based property relations and African governments were called upon to formalise the evolving land markets through titling (see Plateau 1992). However, contrary to this thrust, many donors continued to fund land titling during the 2000s (e.g. the World Bank in Ivory Coast, MCA in Madagascar and Lesotho) and promote national land policies (e.g. DFID in Tanzania; USAID in Mozambique). These policies, which enabled a wave of land alienation through long-term leases, were to attract domestic and foreign investment.

The World Bank's return to the land tenure reform agenda in Africa, focused on institutional reform and selective titling and registration, was also based on its economic liberalisation framework (Whitehead and Tsikata 2003; Razavi 2003; Aryeetey et al 2007). Under structural adjustment, state-led land reform was replaced by market-based land policy reforms, emphasizing land privatisation and market-based land redistribution (Moyo and Yeros 2005). Peck (2002) draws attention to the role of the nation state in making and policing the implementation of the rules of globalization to provide cover for the development of markets (such as in land) in global and local arenas. The state's importance in regulating

the liberalisation agenda, through land tenure reforms, is highlighted in some of the chapters (e.g. Baye and Khan).

Beyond land titling, the increased commercialisation of agriculture has increased pressures on land, through growing 'informal' land markets, in various African countries (Amanor 2008). Indeed, African land tenure regimes and landed property relations are increasingly being reshaped by the expansion of 'informal land markets', as well as the deepening of labour and contract farming markets (Ibid). Land markets are seen in a positive light in the literature and are considered to be effective in reallocating land from less efficient to more efficient producers, who are often smallholders (see also Emanu and Seyoum; Zonon, in this volume).

Many studies and policy discussions on land tenure systems often focus on ownership or rights of appropriation, to the neglect of indirect means of access to land, such as delegated use rights; also known as derived or secondary rights. Such rights are defined as 'all temporary rights obtained by delegation from holders of rights of first occupancy and they include both traditional forms of open ended loans and more monetarised arrangements like rental or share cropping' (Lavigne Delville et al 2002:1). Institutional arrangements of derived rights include leasing, tenancy, share contracts and loans and a whole host of similar arrangements. A review of studies of share contracts which have examined their efficiency, equity and sustainability, has found that while some see them as exploitative, others consider them dynamic, efficient and equitable, while a third set of studies argue that while they might have been equitable once, they are increasingly exploitative (Lavigne Delville et al 2002; Agbosu et al 2007).

The preoccupation with land markets and their growth has resulted in a silence on and underestimation of non-market transactions in land. These transactions can be situated within a broader framework of land tenure, which takes account of the continuum of land interests and allows the interrogation of the different bundles of rights represented by land tenure interests. Such analysis has the capacity to tackle non-market transactions in land, including those between persons with social relations of kinship, such as marriage. It is noteworthy that these non-market transactions are particularly important to those without strong land interests or without the resources to participate in land markets. For example, many land acquisitions of women from their husbands, parents, lineage and other land owners involve non-monetary exchanges of labour, crops and other resources and occur outside the market.

Land Distribution: Race, Nationality and Class Issues

Differential access to land and diverse shades of land concentration have emerged over time, through state expropriation and formal and informal land markets, in processes operating from 'below' and 'above'. Land ownership has exhibited class, gender and other social inequalities which emerged in the colonial era (see

Lumumba and Kanyinga 2003). In several countries, land laws granted enormous powers of control to the State of land alienated from pastoralists and small-holders. Such land was often granted to a few individuals and corporate interests. Local-level land concentration has involved traditional leaders, elders and other 'indigenes' hoarding large parcels of good quality land, and selling or subletting it to migrants. This has often entailed the abuse of administrative powers by local state functionaries (*ibid*).

Land tenure reforms in Africa have in general not reduced the putative insecurities of customary tenure which have been associated with the persistence of undemocratic, discriminatory and patriarchal land administration practices (Shivji 1998; 2009 Lastaria-Cornhiel 2002). Some research suggests that the root problem of customary land tenures lies in their being embedded in patrimonialism and the 'exceptional' forms of informal African land markets, shaped by structures of autochthony and allochthony. However, it is the evolution of capitalist relations of production and property relations, which redirects customary tenure regimes towards various forms of commoditised social relations (Amanor 2008).

Where colonial land expropriation established large-scale farming systems (e.g. Kenya, South Africa, Algeria), the combined issues of race and class monopolisation of land fomented cheap labour 'markets'. Even where settler land expropriation was not extensive (e.g. Mozambique, Swaziland, Tanzania, Zambia, Cameroon), the race and nationality aspects of unequal land distribution are of concern. The wider problems of land tenure insecurity, exploitative 'informal' land markets and regressive land concentration leading to landlessness, has also affected those remaining customary land 'administration' areas which survived extensive land expropriations.

After independence, white settler populations in most countries have tended to decrease. However, their disproportionate landholdings have endured. In some non-settler African countries, small foreign immigrant populations such as the Asians in East Africa and the Lebanese in West Africa have been associated with large freehold and leasehold landholdings. Racially-based differentiation of economic power and wealth is in some cases associated with unequal land control, fuelling race-based land conflicts. Without redistributive land reform to redress historically shaped disadvantages, it is unrealistic (for political and economic reasons) to expect agrarian transformation based on social exclusion to succeed (Moyo and Yeros 2005).

Race-based land distribution inequalities and contestations over agrarian reforms in Africa are also associated with increasing but varying degrees of post-independence foreign land acquisition processes, notably in Mozambique, Zambia and the Democratic Republic of Congo (DRC). Asian landholding residents in some countries (such as Malawi) and white Europeans citizens (e.g. in Zimbabwe) are identified as 'foreign' landowners, largely on grounds of their

alleged dual citizenship. However, foreign corporate ownership of agricultural land has tended to be protected from racial grievance on grounds of protecting foreign investment (e.g. in Namibia). While many African land policies restrict foreign land ownership, it has endured and expanded alongside long-term leases.

In large parts of southern, eastern and northern Africa, where highly unequal landholdings have produced landlessness and land shortages, redistributive land reforms since independence have been a limited and gradualistic market-based affair. A limited sub-division and redistribution of state owned and freehold lands to small producers, has been underway in Namibia, Malawi, and South Africa, where state permits, leasehold and freehold tenures are being introduced. The land tenure debates here have lagged behind those discussed above, since scholars, practitioners and the landed 'gentry' are preoccupied with preserving the freehold property of large-scale (white) farmers (Moyo 2008). Indigenous elites call for freehold tenure (seen as the 'ideal') in redistributed lands (Scoones 2009), amidst a simmering of anti-market demands for land redistribution.

Zimbabwe from 2000, took an opposite turn, of repossessioning large-scale farmlands, and redistributing these to small producers and a new breed of middle 'commercial' farms, and replacing freehold tenures with statutory permit and leasehold tenures, while retaining existing customary tenures (Moyo 2009). This echoed the statist tenure reforms of the 1990s in countries such as Tanzania, Ethiopia and Eritrea, which attempted to abolish private land ownership, while seeking to replace indigenous tenure systems with alternative community-based tenures.

Land Markets and Women Land Rights

The erosion of women's land tenure interests has been a common feature of the inequalities in land distribution in both the settler colonies and the customary land administration systems. The expansion of commodity production, the growing individualisation of land and particular applications of customary land tenure rules have whittled away women's tenure security and eroded certain pre-colonial safeguards they enjoyed (Mbilinyi 1989; Karanja 1991; Knowles 1991). Thus much of the literature on land tenure in rural areas of sub-Saharan Africa finds gender inequalities in access to lineage land. In many cases, women do not control land, livestock and farm produce and do not make decisions about what to grow and when (Izugbara; Touray, in this volume). Dominant ideologies cast women as unreliable protectors of clan land. In the light of their disadvantages, it is suggested that farmland market transactions offer women a way out of their predicament and has the potential to empower them.

On the basis of the above, there is interest in the literature on the potential of land markets for empowering women. Izugbara (in this volume) examines the extent of women's access to and participation in rural farmland market transactions and the scope these transactions offer for escaping landlessness and poverty. On

the basis of a survey of some rural communities in Nigeria, Izugbara (in this volume) found that even if market transactions had an empowering potential for women, the majority of women lacked the resources to use them. The most common market transactions among the women were leases, rentals, pledges and loans, described in the chapter as low-cost, requiring little cash investment, but subject to revocation, contest and renegotiation over time. Thus they had the advantage of flexibility but also the disadvantage of generating conflict and misunderstanding and also insecurity.

In several instances, women's market access still had to be mediated by men, whose attitudes to women's market transaction aspirations were sometimes supportive but often ambivalent and hostile. This suggests that the same socio-cultural practices which discriminate against women in land access and control in non-market transactions are also present in the organization of land markets. Izugbara therefore concludes that poverty, gender relations and male-biased socio-cultural values and norms are key obstacles local women farmers face in accessing farmland markets (*ibid*). Some of these themes are also tackled by Touray (in this volume) who examines the strategies used by Gambian women to gain control of land.

African's Land and the Agrarian Questions

Land reform is an integral part of the agrarian question, which is a fundamental element of the national question. The classic agrarian question was concerned with the transition from feudal/agrarian society to capitalist/industrial society (Byreson, 1991).² Capitalist relations of production have penetrated Africa extensively, while a few countries (e.g. South Africa, Mauritius) are industrialised. Large-scale agrarian capitalist forms of production are evident in former settler colonies and in enclaves elsewhere, and rural social differentiation is universally evident, in spite of the lineage-household structure and social relations of production. Resolving the agrarian question, including the issues of land distribution and systems of agricultural production, is tied to industrial transformation, and of necessity entails various forms of 'urbanisation' and uneven (enclave) development. This evokes a wider scope of non-agricultural land questions.

Following modest but sustained economic growth from 1960 to the early 1970s, Africa faced stagnant and declining growth, under structural adjustment, until the upward turn from 2002 (Ocampo, Jomo and Vos 2007). This entailed an expanding labour force in agriculture, mining and services (formal and informal), alongside de-industrialisation. Over 65 per cent of Africans still depend on land for farming and pastoral livelihoods, primarily as self-employed households and labourers. Even where agriculture contributes less than 10 per cent of GDP (e.g. in South Africa, Mauritius and Nigeria), the agrarian dimension of the land question is pervasive. This underscores the significance of access to land and its utilisation in shaping the continent's development.

An impact of the unresolved agrarian question is the cyclical food shortages among poor people, who lack land and other means to produce their own food, in a situation of unequal land distribution and diminishing wage incomes. Sub-optimal land and labour productivity in African farming leads to diminishing real incomes from agricultural work. Related to this is the tyranny of monopolistic agricultural input and commodity markets based on unequal trade relations (AAI 2009). Resolving the agrarian question is integral to nation building in the predominantly agrarian economies. However, the stalled agrarian transition transfers the costs of social reproduction to land-based agrarian livelihoods in the countryside and the urban milieu.

After independence many African countries nurtured some indigenous populations of large-scale agricultural landholders (Mafeje 2003). This gave impetus to increased inter-capitalist competition for land, pitting the emerging and aspiring indigenous landed bourgeoisie against foreign capital and settler bourgeoisie, and transforming the purpose of agrarian reform from its redistributive objective to the nurturing of indigenous agrarian capitalists (Moyo 1995).

Agricultural policies are increasingly bi-modal in character. Large-scale farmers specialise in the export of high-value crops while small-scale farmers focus on domestic food markets. Large-scale farming, in countries such as in Kenya, Zimbabwe, Zambia, Botswana and Tanzania, dominates domestic financial, infrastructural and human resource allocation, agricultural inputs and output markets, at the expense of 'rural cultivators' and farm workers. The incorporation of small African cultivators into world agricultural markets, through agri-business, has been accompanied by the withdrawal of state subsidies for both agricultural (and food) production and consumption. This has further marginalised them in terms of unequal trade and farm price receipts (AAI 2009). The contradictions of bi-modal agrarian policies in the economic and political spheres have grown rather than declined, since an equitable bifurcated model would require that national policy frameworks move away from the privileging of larger farms, in terms of credit, agricultural services, electricity, irrigation and marketing infrastructure. Small agricultural producers instead 'survive' by combining farming with 'non-farm livelihoods', and cross-subsidising the social reproduction of labour in the towns and countryside (Mafeje 2003; Moyo and Yeros 2005).

Africa's narrow structural focus on primary production is undergirded by low levels of agricultural land and labour productivity, compared with other less developed regions (Ocampo, Jomo and Vos, 2007). This accounts for its poor economic and employment growth (Rada and Taylor 2007). Over the last 20 years, per capita food production has declined by 2 per cent a year, even as population growth rates have remained high (WDR 2008). Africa's use of fertilisers per unit of cropped land has remained the lowest in the world, although it had grown slightly between 1960 and 1980, only to decline since then. Less than 2 per cent of its one

billion hectares of cropped area (and only 13 million hectares out of 43 million hectares of potentially irrigable land) in Africa, is irrigated (ref. UNEP 2002). Not surprisingly, between 1960 and 2000 crop yields grew slowly.³ Agricultural productivity decline has since 1980 been associated with reduced state agricultural support (Mkandawire and Soludo 1999; Poulton and Dorward 2008). Low investment in productivity enhancing technological change underlies the retention and expansion of extensive farming systems, dependent on the self-exploitation of cheap household labour, constituted mainly of women and children.

Given that the absolute amounts of land suitable for cultivation and grazing is limited,⁴ prime lands are increasingly captured by elites, agricultural productivity is stagnant and population growth is high, more small producers have been forced to produce on physically marginal land areas. Pressure on agricultural land has resulted in rapid soil exhaustion which exacerbates the decline of yields, overgrazed grasslands and high rates of deforestation (UNEP 2002). Increasing droughts and floods, the increased siltation of rivers and wider ecosystems and biodiversity degradation further undermine the livelihoods of small producers (ibid). In this situation, land shortages and landlessness have triggered low and high intensity conflicts over land, albeit in varied degrees in different parts of the continent.

A persistent land question is whether the current pattern of extroverted land utilisation engenders accumulation and social reproduction processes which can address the agrarian question. Many African countries tend to allocate significant amounts of arable, irrigable and grazing lands to production for world agricultural markets, rather than for domestic food and industrial markets. The conversion of farmlands to tourism-based land uses (such as safaris, game ranching and conservancies), is common in East and Southern Africa (Chachage 1999; Moyo 2000), while land reserved for timber exports is substantial in West and Central Africa (Amanor 2008).

Such land uses concentrate not only land but also public financial resources in the interests of foreign capital, in competition with domestic food production and accumulation processes. These sites are a growing focus of land and resource conflicts, pitting livelihood struggles against claims of promoting the sustainable management of fragile lands and natural resources, and attracting foreign investments.

The Land Questions of Urbanisation

It has been argued that rapid urbanisation in Africa has shifted the primary land questions from the agrarian sphere towards a variety of urban land issues. Liberalisation policies since the 1980s contributed to accelerated urbanisation and the growth of slums and urban poverty. De-industrialisation did not stop the growth of urbanisation, although urban growth rates have since fallen (Potts 1997). While the rural-urban drift continued, urban areas lost their capacity to absorb labour. Instead, the informal

economy absorbed the massive formal economy retrenchees and urban migrants in general, leading to its phenomenal enlargement (Omari 1995 ; Rakodi 1997 ; UN-Habitat 2003 ; Davis 2004). The economies of cities in Cote D'Ivoire, Tanzania, Gabon and the Democratic Republic of Congo, for instance, were contracting by 2-5 per cent a year while having to cope with population growth rates of 5-8 per cent per annum (Davis 2004). This expanded the slums, characterised by very poor housing, overcrowding, insecurity of tenure of both land and housing, inadequate or missing basic services such as water and sanitation.⁵ While the poor infrastructure has in certain cases created income-generation opportunities for informal operators, it has also deepened the exploitation of consumers who very often cannot afford some of the services on offer (ibid; see also UN-Habitat 2003). Slums are both the dwelling and workplaces of the majority of urban informal economy operators, and two out of every five slum dwellers experience life-threatening poverty (UN-Habitat 2003).⁶ Apart from worsening poverty and inequality, the retreat of the state from social provisioning under structural adjustment exacerbated unplanned urbanisation and the rise of slums.

Extensive urbanisation has been accompanied by the persistence of various forms of urban-based agriculture. Within urban spaces, the challenges of managing the competing land uses between agriculture and housing, particularly in the peri-urban areas have been immense. Urban agriculture, either on home gardens or in the urban peripheries, is an increasingly important informal economic activity. Its growing prevalence and economic significance since the early 1980s has been attributed to the impacts of economic liberalisation (Mbiba 1994; Foeken 1997; Rogerson 1997; Niger-Thomas Agbaw 2000). Full-time and part-time urban farming grew substantially during the early 1980s and mid-1990s, in the Democratic Republic of Congo, Uganda, Tanzania, Kenya, Nigeria, Lesotho, Zambia Zimbabwe and South Africa (see Rogerson 1997). With poor urban households in Kenya, Mali and Tanzania spending between 60 and 89 per cent of their incomes on food, and city dwellers paying between 10 and 30 per cent more for their food than rural dwellers, this expansion of urban agriculture of adjustment is easy to understand. In Kenya, Zambia and Zimbabwe, low-income women have been major participants in urban agriculture. While it is an activity critical to their survival, urban agriculture has not been the preserve of the poor (Rogerson 1997).

For many informal economy operators, multiple livelihood activities have become the norm. This is referred to as diversification (Bryceson 1996), which can involve the same person or household engaging in two or more livelihood activities. Many multiple livelihood activities entail rural-urban linkages, with certain urban informal economy operators being able to utilise resources such as land and labour in rural areas. For example, some traders in Zimbabwe produce maize on land in rural and urban areas; some receive food – such as groundnuts, maize, meal and peanut butter – from relatives in rural areas in return for financial support.

In many urban areas, large areas of informal settlements have created thriving informal land markets whose regulation is considered key to orderly urban development. However, state attitudes to informal settlements, economic activities and land markets are mired in a long history of colonial regulation and surveillance and post-colonial neglect. As the urban studies in this volume (Oruwari and Owei; Tati; Ramanou) suggest, state control of urban spaces can be tenuous and the tensions between states and sections of local communities, particularly urban youth, raise telling questions about entitlement, social exclusion and the interests of subaltern groups.

It is in also in these urban spaces that some of the more virulent questions about autochthony and allochthony and citizenship are posed, particularly where there are also established internal migrant communities (see Adetula, in this book). In contrast with studies which highlight violence and contestation in relations between migrants and locals in struggles over land, Tati (in this volume), discusses the successful integration of international migrants and what is described as a climate of tolerance towards them. In this case, migrant populations have successfully navigated relations with state institutions and local communities, constructing identities which have protected them and maintained a peaceful coexistence with others, while enabling them to acquire land for their economic activities and housing. Strategies which have enabled migrants to appropriate public spaces (the beach and side-walks) without strong opposition from either the locals or the state include the promotion of the notion of the indispensability of migrant services – whether in providing fish for the city or ready-made affordable furniture. As well, alliances with locals have transformed migrant demands into local demands while migrant networks were successfully used in indirect negotiations for space and rights and also to deliver services more efficiently than local artisans. Migrant networks have in some cases operated as local governments with vast powers, with their leadership being involved in lucrative land transactions, unbeknown to municipal authorities (*ibid*).

State land acquisitions in urban areas have long been an area of contestation and grievance. The allocation of state lands to private developers and individuals in prime areas in capital cities and major urban settlements have been a source of conflict across Africa as the elite have enriched themselves through the resale of such allocations in the booming urban land markets (see Oruwari and Owei; Ramanou, in this book). Extensive public sector land acquisitions in Port Harcourt are at the heart of land and citizenship conflicts, pitting members of indigenous communities against individual land developers and migrants (*ibid*). Port Harcourt has all the hallmarks of the classic urban land question – changing land use patterns from agriculture to housing accompanied by large-scale state land acquisitions mired in patronage and land speculation leading to landless urban communities, tensions between statutory and customary law rules about the

nature of land entitlements, conflicts between entitlements based on indigeneity and citizenship and angry dispossessed youths in rent-seeking activities and as enforcers of community rights. What is significant in this case is the loss of state legitimacy as an honest arbiter in land conflicts and the failure of legislation as a tool for urban management, resulting in the increasing use of non-state dispute resolution forums (Oruwari and Owei, in this volume).

The discrediting of state institutions as credible land managers and administrators has underpinned the current renaissance being enjoyed by customary land law and traditional land custodians such as chiefs and elders. The expansion of urban real estate markets and the commodification of peri-urban land has in some ways deepened the wider evolution of land markets in Africa. An examination of the dynamics of peri-urbanisation around secondary cities also suggests that the inability of public institutions to properly manage the land tenure issues has resulted in institutionalised anarchy and land use conflicts, which have shaped land markets. It has been suggested that for cities such as Parakou, Tchaourou and Dassa-Zoume, which have large segments of intermediate spaces with rural and urban characteristics, the transfer of land administration to local authorities would facilitate the more effective management of land transactions (Ramanou, in this volume).

Land, National Integration And Citizenship

Land and the Citizenship Question

The African state is at once a landlord, the putative 'guarantor' of land rights, and (in some countries) a major user of land, in a context of competing land claims by various social forces (Okoth-Ogendo 1996). Large tracts of land in many African countries are controlled by the state through various state agencies and through state powers over local and traditional authorities that control land under municipal and customary tenure regimes. The state has other regulatory powers over statutory lands (e.g. leasehold lands) and land markets. Political hegemony is often exercised through state powers to allocate land and related resources, as well as through state structures responsible for land disputes resolution. Such power is bolstered by state influence over the regulation of water and natural resources and economic policy, which involves direct public financing and the (de)regulation of capital, and thus incentives for land utilisation.

The control of land continues to dominate national politics in Africa, even where mineral and natural resource rents are significant. Land is a key resource in mobilising political power, including through electoral politics. Land reforms can be critical sites of electoral struggles, when domestic class, race and ethnic power structures are unevenly pitched in relation to unequal land distribution. The Zimbabwe experience since 1997 and Kenya's electoral contests since 1992 are notable cases where elites manipulated long-standing but latent inter-ethnic or

racial disputes over land into violent confrontations (Moyo 2008). The persistence of various forms of authoritarian rule is deeply embedded in the repression of social demands for the control of land, as well as other means of social reproduction.

Debates on land and citizenship have so far been couched in the narrow framework of neoliberal economic and liberal democratic reforms. The citizenship question, when cast in terms of national sovereignty and socially just development, of necessity raises wider concerns regarding Africa's agrarian and national questions. Inequitable control of land shapes not only contested understandings of national sovereignty and local territoriality, but also the meanings of development, citizenship and democracy. These contestations are the basis of numerous identity-based struggles over land sweeping the African continent, some of which are explored in several of the chapters of this book (see Adetula; Oruwari and Owei ; Baye and Khan).

Land control is one of the factors shaping historical and contemporary processes of class formation, transected by gender, ethnic and other social cleavages, which characterise evolving African social relations. Social inclusion and exclusion, reflected in notions of identity, belonging and citizenship, are partly shaped by the nature of prevailing land rights and their security (Geschiere and Nyamnjoh 2000; Mamdani 1996). The crises of citizenship or social exclusion in relation to land, is enhanced by authoritarian modes of rule at central state level and through customary authorities, (ab)using public law and administrative processes, as well as by anti-developmental policies.

Some questions of indigeneity and citizenship are taken up in Baye and Khan's chapter which traces the struggles of the Bakweri of Cameroon to regain lands taken away from them by the German colonialists and applied to large-scale agricultural plantations to produce rubber, oil palm, tea and banana on an industrial basis. This became the Cameroon Development Corporation (CDC), the largest agro-industrial complex, and second largest employer in Cameroon after the state. Its labour needs which could not be fulfilled by the Bakweri were addressed by encouraging an influx of labour into the area from other parts of Cameroon. Land acquired by in-migrants from locals for farming to supplement poor wages on the plantations is a complicating factor in the Bakweri land situation. Like several land dispossession problems created in the colonial period, the Bakweri case has defied post-colonial solutions as elite interests have taken priority. The current situation in the the Kolda Region in Senegal raises similar questions. Ngaide (in this volume), notes that though land in this region is very fertile, it was little developed because of the small size of the population who were also largely Fulani pastoralists. More recent in-migration is fast changing the situation with forests being cleared by settlers from the groundnut farming areas. Their presence and activities are provoking land use conflicts and disrupting community relations in spite of legal reforms and policies which have been put in place to harmonise indigenous and migrant relations.

Attempts to marketise land by assigning exclusive land rights to individuals have led to a conflictual relationship between customary authorities and individuals over the authority to allocate land. Control over land allocations in post-independent African states tends to be increasingly delegated to elected or appointed rural councils, leading to conflicts between formal law and customary land rights, as seen in Côte d'Ivoire and Burkina Faso (Delville 1999) and in Ethiopia (Submarian 1996). Although the state retains an overriding right in land allocation, local authorities usually remain legitimate in the eyes of the community and continue to enjoy considerable political power over land management systems (Submarian 1996).

In many African countries, legal pluralism in land management and adjudication has been the source of many conflicts and contradictions over land rights (Okoth-Ogendo 1996 ; Tsikata 1991; Shivji 1998 ; Lastarria-Cornhiel 2002). Customary law in land matters in southern Africa, for example, applies mainly to indigenous Africans, while the formal legal system is reserved for mainly white, but increasingly also black elite land markets (Mamdani 1996). Legal pluralism is often discussed in the literature as the existence of two separate systems of law, one customary based on African traditions, and the other statutory law based on received law. In practice, legal pluralism presents a much more integrated and messy reality with some aspects of land relations governed by customary or statutory law, or by both. In several jurisdictions, the codification of customary laws and the application of both customary and statutory laws in state-run or sanctioned courts and other land adjudication forums has meant that these are not completely separate systems of law. It has been suggested that while the citizenry are aware of these overlapping systems, it is mainly the elite who can exploit legal pluralism to their advantage while for many others, the choice of forums is constrained by access and resources (Whitehead and Tsikata 2003).

The expropriation of land for 'commercial' and 'social' development is usually carried out by central state institutions, in the name of development and national interest; but often the allocations of such land exclude poor people (Amanor 2003). When rural people oppose expropriation, the legal channels available for redress are limited by unrepresentative land bodies, including chiefs, elders, and others in local leaderships (Shivji 2009 ; Amanor 2008 ; Murombedzi 1999). Chiefs are often the partners of the state in expropriating farm land, and are recognised by the state as the legitimate representatives of the people. Thus their role in the mediation of land conflicts is usually overshadowed by transmitting government policies to the rural people and ensuring their compliance (Amanor 2008). On the other hand, with the growing individualisation of land, the independent interests of chiefs are often in conflict with those of their subjects, other citizens and state institutions. This creates difficulties for many land users in a situation where the state has lost its legitimacy and power to mediate the conflicts between chiefs and people (Ubink and Amanor 2008)

The growth of foreign ownership and interests in land in Africa (with or independently of domestic capital), for agriculture, natural resources exploitation, tourism (in coastal zones and wildlife conservancies), and urban real estate, has also been critical in shaping the transgression of citizenship in relation to land rights, and ineffective nation building.

Land tenure administration reforms have tended to have a neo-liberal conception of good governance, focusing on the decentralisation and democratisation of land institutions, enhancement of land administrative efficiency, broad-based representativeness of local structures with regard to land control and civil society participation in land administration. This is within a framework of introducing formal and statutory law into land management systems. They claim to 'secure land tenure', but are intended implicitly to make the institutions market-friendly. As Amanor (2008) argues, there are limited channels for addressing land grievances in these land administration systems. Even more fundamentally, several commentators have argued that they are worsening the tenure insecurities of marginal groups such as women, migrants and young persons (Wily and Hammond 2001; Aryeetey et al 2007; Tsikata 2009).

Ethno-regional Cleavages and Land Relations

Various social hierarchies derived from gender, generation, race and ethnicity have intensified since colonisation and the growth of capitalism (Moyo and Yeros 2005). In contemporary Africa, disarticulated accumulation and semi-proletarianisation provide the structural economic basis for the flourishing of powerful social hierarchies that either fuse with class, such as race, or cut across it, such as gender (Yeros 2002). The synergy between class and race is notable in former settler colonial states, where there is a history of domination and resistance-fused class and race discourses (Moyo and Yeros 2005).

Colonial and post-independence land policies tended to partition national spaces into ethno-regional administrative regions, such that enclaves of growth or of land and resource concentration occurred alongside perceived ethnic marginalisation. Land conflicts increasingly have taken the shape of 'ethnic' struggles, blurring the complexities of uneven development (see also Mamdani 2009). For instance, pastoralist societies compete with sedentary populations for the control of grazing lands and water supplies, especially during droughts. This is linked with processes of demarcation of boundaries that have fragmented pastoral groups and impeded cross-border movements, and undermined the 'viability' of customary land and resource-use systems (Flintan and Tamrat 2002). The spatial re-ordering of villages and families in Malawi, for instance, was instrumentalised to consolidate the ethnic-based power structures of the colonialists' choice and to create a framework for tax collection, regulating migration and selective land allocations (Moyo 2008).

Minority ethnic or 'indigenous' groups, such as the San/Bushmen in Botswana and the Herero in Namibia, were marginalised by colonial and post-independence state land expropriations intended to facilitate the reallocation of land to local elites and foreign capital (Moyo 2008; see also Baye and Khan, in this book). African countries with ethnic groups that practice different customary legal systems may or may not recognise the dominant systems of customary adjudication. In those countries with significant Muslim populations (such as Nigeria, Tanzania and Sudan) the adoption of Islamic family laws in predominantly Muslim regions contradicts both the customary laws and received legislation on land that applies to other regions with different legal traditions (Lastarria-Cornhiel 2002).

Land redistribution in former settler states also raises the question of land rights of white minorities. While some (Hammar and Raftopolous 2003) have argued that the Zimbabwean land reform was based on racial exclusion and entailed a loss of citizenship rights, others have seen this as redressing historical inequities human rights violations (Sadomba 2008).

Gender Hierarchies in Land Relations

Gender hierarchies in customary land tenure systems, particularly in land acquisition and allocation practices and land inheritance have been reinforced by the growth of land markets and the biases in statutory land law systems. In spite of women's pivotal role in agriculture and household provisioning and numerous instances of skilful manoeuvring and the exercise of their agency, their land interests have been eroded and contested in situations of tenure insecurities and land hunger.

A plethora of micro studies conducted across sub-Saharan Africa from different disciplinary vantage points since the 1970s established the existence of gender inequalities in land tenure systems (Boserup 1970; Okeyo 1980; Himonga and Munachonga 1991; Karanja 1991; Mackenzie 1990; Mbilinyi 1999; Guyer 1995; Okali 1983; Kevane and Grey 1999; Lastarria-Cornhiel 1997). These inequalities have been traced to the wider changes in land tenure systems as a result of colonisation and the profound changes in land use patterns. More recently, studies have explored the implications of land tenure for women's citizenship (Wanyeki 2003; Manji 1998), agricultural productivity and national development (Udry 1996; Quisumbing 1996) and for their social standing and rights in other spheres of life (Butegwa 1999). In times of rapid socio-economic change and crises such as conflicts and the HIV /AIDS pandemic, the fragility of women's land interests have been accentuated (Abdullah, Nzioki, forthcoming).

In spite of these, there have been suggestions that women's land tenure insecurities have been overstated, and that studies have not taken cognisance of the social embeddedness of women's land claims and its protective potential. As well, it has been suggested that in certain situations, it is the lack of capital, labour,

water and time which are more profound constraints on women's agriculture than land tenure (see Whitehead and Tsikata 2003; Yngstrom 2001; Nyamu 2002, for discussions of these views). These discussions about the nature of gender conflicts in land tenure raise questions about the merits and difficulties of social embeddedness, but also highlight women's agency and their efforts to secure their land interests in the face of contestations.

For various reasons, gender conflicts in land tenure are more often at the level of the household and lineage than within land markets. Women have been known to withdraw their services (Kotey and Tsikata 1989), or more rarely rewrite the rules of inheritance to favour themselves and other women in their situation (Touray, in this volume). They have also been known to litigate in the court in support of their rights (Butegwa 1999; Nyamu-Musembi 2002; Kotey and Tsikata 1998), although this is again a minority activity. When development projects have allocated land to women for their economic activities, gender conflicts involving husbands and wives about the control of the proceeds from such activities, and the withdrawal of women from domestic work have been observed, as have been the negotiated management of such conflicts (Schroeder 1996). In all these situations, what becomes clear is the time-consuming investments women make to secure their tenure, and the contingent nature of tenure security.

Land Struggles and Socio-Political Movements

The unequal land rights and interests which dominate African societies, pit the powerful and politically organized against the land-short, who are mostly poor and weakly organized, within a variety of social, environmental and economic contexts. A variety of land movements are found in Africa (Romdhane and Moyo 2002), and these reflect heterogeneous histories of land dispossession and the emergence of diverse discourses on the land question. The definition and meaning of land rights, land boundaries and forms of struggle are all contested (see Patel, in this book). Formally and informally constituted associations are based on complex social bases and relations, including intersecting social and identity cleavages, relating to class, race, ethnicity, indigeneity and gender (Moyo and Yeros 2005; Ballard, Habib, Valodia and Zuern 2006). They mobilise land struggles espoused through varied ideologies. Social and popular demands for land, while generally couched in terms of access to land and the protection of land from land alienation, are not often addressed by the state (see Patel, in this book). The redistributive agenda is often suppressed or co-opted by the state and capital, as well as through elite-led ethno-regional identity-based land movements (see Adetula, in this book). Land movements flow and ebb in relation to the changing role and interests of the state, its modes of rule and official discourses on land (*ibid*).

National liberation movements, seeking to redress racial and ethnic imbalances in the control of land, have long been recognised leaders of land movements (Moyo

and Yeros 2005). Under-examined, however, is the precise class character of their demands for land restitution (Ntsebeza 2006). The quality of reparations sought by victims of colonial dispossession from former colonial masters, vis-à-vis the victims of post-independence land reforms is also contested (see Mamdani 2001). Colonial land reparations were partially provided in Kenya, Zimbabwe, Botswana and Swaziland, but not elsewhere. Organised demands for redistributive agrarian reform in settler Africa strike at the heart of the dominant national and cultural identities through which the conditions of super-exploitation are reproduced (see Moyo and Yeros 2005; Fanon 1961; Cabral 1979; Molomo 2008).

Wider land struggles, beyond colonial state land expropriation, are related to post-independence state-led land expropriation and the growing control of land by various types of African 'migrants' and 'settlers'. These tend to be 'othered', in terms of ethnic, cultural and religious identities, and regarded as foreigners, 'strangers' or 'non-indigenes' (Baye and Khan; Ngaide, in this volume). Other land struggles are derived from a variety of localised land scarcities and the negative effects of various environmental stresses.

A key political dynamic associated with neoliberal economic reforms and democratisation, including 'decentralisation', has been the emergence of various forms of local socio-political organisations or 'movements', involving various classes and identity mobilisations, seeking to protect their lands and natural resources and to gain access to same (Geshiere 2005). These utilise various ideologies, strategies and tactics, to confront the state, capital and various dominant social hierarchies of class, patriarchy, settlerism, indigeneity, race, ethnicity and age (Moyo and Yeros 2005).

Indigenisation or affirmative action lobbies and farmers' unions, seeking to construct an agrarian capitalist class, with some mainly focused on ethno-regional and women's empowerment, have been influential in setting the land reform agenda. In settler Africa, this is related to the deracialisation of the large-scale commercial farm sector (Lahiff 2007; Ruth 2007), while elsewhere (e.g. in Botswana, etc), they seek to establish a bi-modal large-small farmer agrarian structure. This 'dualistic' but essentially capitalistic approach to land reform advocacy, pitting aspirant large farmers against small producers, dominates the official land reform agenda in many parts of Africa (Moyo and Yeros 2005). This has shifted land policy discourses from the criteria for land access from the 'landless' and 'insecure' towards the 'capable' and 'efficient' indigenous agrarian capitalists, within the terms of the neo-liberal global paradigm (ibid).

Land struggles in Africa are numerous, albeit isolated and scattered, and often incipient and not formally organised. High-profile and low-profile conflicts of both a spontaneous and engineered genre abound (Moyo 2001). Some land movements simply resist the dominant logic of capitalist development in rural areas and, in particular, struggle to retain control over land (Lumumba 2003).

Contemporary African rural movements, whether formally organised or in the process of being organised, which have a progressive agrarian reform agenda, are only slowly emerging, and have not become the nuclei of oppositional politics within their respective states (Moyo and Yeros 2007). The tactic of direct action, through land occupations, has mostly been overwhelmed by state repression and co-opted by the welfarist projects of the NGOs.

African land movements or organisations tend to be dominated by lineage elders, within clan-based social and territorial structures, through a framework of 'traditional' authority (Mafeje 1999). Many land movements often assume an explicit or implicit 'ethnic' and/or religious character, even where colonial administrations had contrived these administrative and political districts as 'tribal' chiefdoms for indirect rule. Such structures are reinforced by the state to prevent rural demands from being placed in a broader horizon beyond the community (Amanor 2008). Other movements combine the lineage base of organisation with other forms of association.

Formal farmers' associations have for long been an established feature of rural or land movements. However, their membership tends to be widely differentiated with the leadership often dominated by elite farmers, whose demands focus on securing larger portions of state resource allocations (Moyo 2000). In general, farmers' organisations and unions that collaborate with the state are differentiated by their political intent and domestic policy demands, which are linked with their relationship to capital, state-driven production processes and foreign interventions. Many of them tend to be far removed from the majoritarian demands for redistributive land reforms, having been co-opted into neo-liberal land tenure and agrarian reformism (*ibid.*). A factor which drives their politics is their association with NGOs which are predominantly middle-class based and international aid led (Helliker, 2008; Moyo 2001). A few radical land movements have emerged on the back of NGOs, narrowly-based 'leftist' civil society leadership, as was the case with South Africa's Landless People Movement (LPM) (see Rajeev Patel in this book). The contradictions between, on the one hand, the mainly middle-class NGO intellectual leadership and the landless peoples' structures and, on the other, the nationalist mobilisation of interests in land, soon became the source of the LPM's demise (Mngxitama 2006). Thus, while land movements should not be idealised, given the progressive and, at times, retrogressive character of their struggles for land reform, their importance cannot be underestimated.

Most of the national land policy reforms have involved a degree of NGO lobbying, engaging state-led tactics which use expert panels, investigation task forces or comprehensive commissions of inquiry, and 'consultation' processes, which have often been manipulated to legitimise state land policy decisions (Moyo 2008). Parallel civil society advocacy initiatives are also common, as was the case in Kenya where NGOs sought to unravel the landholdings of the Kenyan elite

(Lumumba 2003). However, their redistributive orientation has been blunted by divisions about positions and struggles within civil society.

Majoritarian redistributive land demands are more often reflected in informal movements representing a variety of social forces, including those that pursue land occupations, resource poaching and other forms of 'sabotage' (see Petras and Veltmeyer 2001). Land occupation movements such as those in rural and urban Zimbabwe before and after the country's independence, represented an unofficial and underground social pressure used to force land redistribution onto the policy agenda (Moyo 2001). The 2000–2001 land occupations in Zimbabwe marked the climax of a longer, less public and more dispersed struggle over land, which intensified under adverse economic conditions and the emergence of a strong political opposition. Moreover, land occupations, a tactic of class struggle and direct collective action, involves differentiated political strategies, which may contradict some of the progressive aspects of the democratisation project. This nationalist land struggle highlighted the 'internationalisation' of land reforms and emphasized not only the racially 'exceptional' character of southern Africa's land question, but also the hegemonic nature of opposition to redistributive land reform in that region.

Informal youth groups have been at the forefront of land struggles. Oruwari and Owei (in this book) document the resistance of youth groups to extensive state land acquisitions that have left their communities dispossessed of farmlands. What is significant is that while the youth appear to be at the forefront of community disturbances, they enjoy the support of prominent elders, many of whom work within the state. This complicates the state's responses and its ability to police such conflicts, which are often compromised by calculations around election alliances. The paradox is that while military rule in Nigeria had kept local conflicts in check, under multi-party constitutional rule, the acts of resistance have become larger with many more violent episodes (see Adetula). Youth struggles have not often led to land redistribution or improved physical planning because their demands and actions promote rent-seeking rather than institutionalised processes of accountability.

In general, many otherwise progressive land movements have not been amenable to championing the cause of securing women's land rights. Where the use of violence is widespread, women have been marginalised and, in certain situations, have found themselves facing insecurity. Struggles which are explicitly based in ethnicity, region, religion, in particular, have reinforced conservative ideologies which have been hostile to women's rights. Mbilinyi (1999) has suggested that the onslaught of neo-liberal market-based ideologies in current land tenure reforms have reinforced, in certain groups which are under threat, the need to struggle for a return to traditional values. These values tend not to recognise women's land interests in a consistent and comprehensive way.

The struggle for land by women, through various formal and informal associations, has been most visibly championed by NGOs in general, and women's land lobby groups in particular (see Touray in this book). It is within the context of recent and ongoing land tenure reforms that women's gender grievances come to the fore. These take the form of demands for joint land title registration for spouses, the laws which require that spouses seek each other's consent in the sale of land and the representation of women in local and national level land adjudication bodies (Manji 2002; Tsikata 2003). These demands have sometimes pitted women's rights activists against others struggling for class and race-based land rights in ways that suggest the failure of the different forces struggling for the democratisation of land tenure to find common cause (see Shivji 2009; Manji 1989; Tsikata 2003 for accounts of struggles in Tanzania; Touray in this book).

Often, the struggle for land is a struggle for secure and sustainable livelihoods, particularly in situations of wider resource conflicts. In the Niger Delta, women's associations have been at the forefront of the struggles which have targeted foreign oil companies (Turner and Brownhill 2004). Women's involvement during 2002 and 2003 was found to be a response to the broad impacts of the oil industry, particularly because the communal land holding and the social relations critical to the subsistence political economy which operated in the area was being undermined (*ibid*). Ibeanu (2001) and Ukeje (2005) detail the waves of protests led by rural and urban women in the Niger Delta, and their breaking with a tradition of seeing women as non-political, preoccupied primarily with domestic affairs and as victims instead of autonomous agents negotiating their priorities. Women had brokered deals between some men, the personnel of the oil companies and the state for corporate commodification which was a threat to their subsistence, in alliance with other men, often their grandsons, building international solidarity with women and men similarly placed around the world (Turner and Brownhill 2004, p. 170).

Women's successes in these struggles have been attributed to the high level of community solidarity, support from women controlling food supplies and trade, and the inaccessible and difficult nature of the mangrove swamp terrain where the oil was found (Turner and Brownhill 2004). Ukeje (2005) raises questions about the long-term effectiveness of women's movements in the struggle over oil revenues beyond their moral and symbolic connotations, noting that this is a common concern in the literature that these interventions are temporary and likely to lose momentum in the face of women's powerlessness in the event of challenges and reprisals (Ukeje 2005).

The mobilisation of minority/aboriginal ethnic societies also speaks of the democratic credentials of land movements. In Botswana, minority ethnic societies such as the Basarwa have been mobilised within a social and human rights framework, with the support of European and national NGOs, to defend their

indigenous land rights. The process has also challenged the dominant paradigm of nation building that has been constructed through the diffusion of the values of the majority culture of the dominant Tswana groups, over these 'remote area dwellers', who have historically been an underclass exploited by dominant Tswana groups as cattle herders and labourers (Molomo 2008). The San in South Africa, Namibia and Botswana have mobilised trans-nationally around their land and social rights, although they depend heavily on NGOs. Similar transnational pastoralist movements' struggles for land have emerged in East and West Africa.

Certain land movements have been characterised by their ability to link local issues with global politics. In the Niger Delta communities, the growing realisation that local struggles could not be isolated from similar struggles around the world against the impacts of international capital and globalisation resulted in the intensification of the mobilisation and transformation of isolated, informal and reactive protests to 'more structured, formalised and institutionalised interventions. This was exemplified by the proliferation of self-help movements and organisations throughout the Delta" (Ukeje 2005:71). The Bakweri land struggles (Baye and Khan, in this volume), are another example of the globalisation of local struggles. The Bakweri established a Land Claims Committee (BLCC) in the United States in 2000 to register a presence in the Cameroonian diaspora and to by-pass and pressurize the Cameroonian state by making direct representations to potential buyers of the Cameroon Development Cooperation (CDC), donors, NGOs, foreign governments and the IMF. The globalised nature of land struggles allows local communities to learn innovative organisational strategies, modify their demands and gain direct access to trans-national corporations (Tsikata, 2010).

Concluding Remarks

In this introduction, we have argued that there is both an agrarian and a land question in sub-Saharan Africa which affects both settler and non-settler countries, but with specificities. Colonial land policies have cast a long shadow; with the struggles they generate raising questions about national integration, democratic citizenship and livelihoods. These conditions have been exacerbated by tenure reforms within a neo-liberal paradigm. Increasingly, in response to the enduring problems of land tenure, there are land movements of all shapes and orientations, some reformist and others quite revolutionary in their agenda. However revolutionary, land movements have tended to ignore the land tenure interests of women, pastoralists, youth and aborigines. Several of these longstanding and emerging issues in land tenure have been discussed in the literature and in the chapters presented in this volume. They include the role of the state in land tenure reforms; urban land questions, the nature of land struggles and movements; and, the impacts of land tenure developments on particular social groups and countries.

All the chapters that follow examine the historical legacy and contradictions of contemporary land contestations. Some focus on the agrarian aspects of the land questions, while others elucidate the urban dimensions.

Not all the emergent land issues on the continent have been covered in this volume, nor does the collection include studies on the most recent high-profile and controversial cases, which relate to various land questions, such as Zimbabwe, Sudan, Kenya and Ivory Coast. Of necessity, therefore, CODESRIA will have to promote a sequel to this multi-national working group on land, in addition to some of its on-going national working groups which also address the land question.

Notes

1. Altogether, of the 2,963,313,000 hectares (2,963,313 km²) of land in the Africa, only 21 per cent (630 million ha) is arable, while 32 per cent of arable land (200 million ha) is dedicated to crop production, 30 per cent (892 million ha) to pasture and 22 per cent (650 million ha) to forest. Deserts or semi-deserts occupy a substantial amount (43 per cent -1,274 million ha) of the area (UNEP 2002).
2. The semi-feudal dimension is of relevance in a few parts of Africa (northern Nigeria, Ethiopia, parts of Uganda and North Africa).
3. In West Africa, yields grew from an average of 0.6 tonnes to 0.9 tonnes per hectare, while they stagnated in semi-arid Southern Africa. Yields grew in those few countries where more high-yielding seed varieties were used from about 1.2 tonnes to 3.0 tonnes per hectare (Poulton and Dorward 2008).
4. A few countries such as Zambia, Mozambique and Sudan have extensive areas of potentially arable land which is underutilized, while many countries such as Rwanda, Malawi and Mauritius; and south-east Nigeria, have extreme degrees of land shortage, with low per capita levels of arable land (UNECA 2004).
5. Over 57 per cent of urban dwellers in Africa do not have access to basic sanitation such as toilet facilities.
6. In Ethiopia and Chad, 99.4 per cent of the urban populations are slum dwellers. Maputo and Kinshasa have the poorest urban populations with two-thirds of residents earning less than what is required for their minimum required daily nutrition. The West African coast (from Abidjan to Ibadan and including Lagos) is estimated to have 70 million slum dwellers, described as “probably the biggest continuous footprint of urban poverty on earth (Davis 2004, p. 15).

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Environmental Degradation, Land Shortage and Identity Conflicts on the Jos Plateau in Nigeria

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Introduction and Background

Dating back to pre-colonial times, tin mining on the Jos Plateau in Nigeria has played a central role in explaining land and related conflicts in the area. The tin industry has led to changes in the physical environmental and the economic and social conditions of the Jos Plateau inhabitants and their neighbours (Baker 1955; Bower 1967; Feund 1981; and Mangvwat 1984, 1989). Pre-colonial tin mining was never geared towards international markets and its operations were not large in scale, so its effects on the physical environment was far less severe than in colonial times (Mangvwat 1989). Mining activities in many parts of the Jos Plateau today involve 'illegal' miners and some government-licensed private companies. Other business ventures like fish ponds, vegetable gardening and dry season irrigation farming have sprung up in the area, bringing more pressure on scarce land and other environmental resources.

Because of intense struggles and competition over scarce land resources among various cultural groups on the Jos Plateau, inter-ethnic relations have become more conflict-prone. Land disputes first became critical on the Jos Plateau under the British occupation when the 'natives' were dispossessed of their land and forced into resettlement camps. Thereafter, local resistance became organised against mining, and the need to expel Fulani settlers. The land question later became dominant in the anti-colonial and post-independence struggles. After independence in 1960,

the policy on land reclamation (in the 1970s) was introduced, but it achieved little and was unpopular among the communities in the tin-mining areas that had lost substantial parts of their farm and hunting lands to mining.¹ The declining economic opportunities in virtually all sectors since the 1980s intensified the competition among the various ethnic and nationality groups on the Jos Plateau over land and related resources. Population growth due to migration and the influx of refugees from neighbouring states increased the pressure on land and other resources which in turn heightened sectarian conflicts. Because of the symbolic ascription of land as a source of origin and 'indigeneity', conflicts and struggles over economic and political power are often associated with the land question, while the political mobilisation of identity by elites accentuates these conflicts.

Whereas it is common knowledge that the effects of environmental degradation arising from mining operations transformed the ecological basis of hitherto self-sustaining and coherent life of the mining areas, the relationship between resource shortage resulting from environmental degradation and identity conflicts over the scarcity of resources, especially land, is still not very clear to many policy makers and scholars, who question the empirical basis of treating the land question as the basis of identity conflicts (see also Moyo 2006). However, in view of the emergence and growth of new social movements based on ethnic and religious identity solidarity over land issues and other natural resources, there has emerged new interest and emphasis on the connection between the land question and struggles for citizenship. To understand this requires discourses on the land question which transcend its traditional link with the agrarian question, towards greater consideration of issues of citizenship, democracy and development; which are also related to the land question.

According to Mangwat (1984), most aspects of people's lives on the Jos Plateau were affected by tin mining: "The tin industry was the principal agent of capital penetration of the Jos Plateau and it affected the economy, politics, religion, administration and of course, the economy of the region." The tin industry has occupied a central position in the descriptive account of Jos Plateau under colonial rule, to the point that other dimensions of the colonial rule are all but understudied (Freund 1981; Alexander 1985). While scholars have shown an understanding of the physical ecology of the tin mining area (its vegetation, soils and landscape), many seem to gloss over the diversity of peoples in the mining communities, their coping techniques, responses and reactions including their social and political actions as well as their organized struggles. The relationship between land shortage resulting from environmental degradation and identity conflicts over land tends to be underestimated compared to the more common perception of conflict in terms of ethnicity, religion and weak state institutions.

The association of land with identity conflicts is most pronounced in central Nigeria. There were violent conflicts between the Hausa-Fulani and the Kanikon

and Kataf in Kafanchan in 1987 and Zango-Kataf in 1992, both in Kaduna State. There were also similar events in Tafawa Balewa in Bauchi State between the Sayawa and the Hausa-Fulani; in Wukari in Taraba State between the Tiv and Jukun, and the Kuteb-Chamba-Jukun also in Taraba. Of interest is the upsurge of identity-based associations which are motivated by deep concern about “conflicted struggles” over resources and political power. These inform the adaptation and coping strategies of the mining communities, particularly the resource management strategies adopted by women to fulfil their obligations to provide for themselves and their families.

Official perceptions of the land question and policy reform in Nigeria is riddled with contradictions. Government programmes, such as land and pond reclamation for farming and other productive uses, are mostly inconsistent with the socio-cultural values of the people. Designed and implemented without involving the people, such programmes have had minimal results and impacts, and instead have increased the potential for conflicts among the communities.

The struggles for land and citizenship in the mining area of Jos Plateau is identified as central to the incessant conflicts in Plateau State today, and this is rooted in a historical process rather than on some immediate problems as projected in the media. In this regard, the pattern and processes of colonial domination in Nigeria, and on the Jos Plateau in particular, is an important contextual factor. Tensions in the relationship between the communities on the Jos Plateau date back to the colonial period when the settler-indigene problem was created by the British colonial administration through its policy of ‘indirect rule’, and the creation of ethnically-segregated communities of natives and settlers. Today, there are violent confrontations over resource allocation and power, making ethnicity in relation to access to and control of land a critical and dynamic variable.

The role of the post-colonial state in the production/or management of land and resource conflicts in Nigeria is also important. The failure to resolve Nigeria’s national question and the failure of official land policies, such as the Land Use Act (1978), and the farming land reclamation programme, alongside the deterioration of the social conditions, underlie the increased incidence of violent conflicts in the urban and rural locations on the Jos Plateau.

This chapter investigates the changing patterns of identity conflicts in the Jos tin-mining areas that are associated with resource scarcity, especially land; drawing attention to the critical link between land shortage and identity conflicts since the introduction of the tin-mining economy around 1902. It examines social movements organised around land issues and the national question, in response to the negative effects of official policies on land shortage, environmental degradation and the deterioration of the social and political conditions. The chapter also assesses the impact of tin-mining activities and resource shortages; emerging social relations along gender lines, focusing on women’s limited access

to community resources; empowerment and participation in the process of decision making; and, resource management. The study is based on field evidence combined with archival and other secondary sources of data.

Land and Resource Conflicts in the National Context

The Colonial Roots of Jos Plateau's Resource Conflicts

Tin mining in the Jos Plateau initiated various ecological problems which underlie current resource conflicts, such that over 560 sq.km of the total 8,600 sq.km of the Jos Plateau is considered a disaster area due to damage of land, forest and water resources. Many people in the area complain about the legacy of polluted water supplies, impoverished land and even radio-active waste.² The area is described as 'a lunar landscape of steep-sided mounds and multi-coloured ponds or lakes' (Raufu 1999 as cited by the Nigeria Environmental Study Action Team).

The industry also transformed the economic, social and cultural life of people in the Jos Plateau mining areas, by restructuring social relations of resource control and use. The discovery of tin on the Jos Plateau led to various colonial wars of conquest from 1902, given the resistance by the Berom, Anaguta, Irigwe and Afizere of Bauchi Province.³ This led to excessive brutalisation and wanton destruction of lives, homes and landed property, and new processes of production and capital accumulation, alongside the peasantisation of the indigenous communities and decimation of some of these nationalities. The forceful appropriation of their land and, the inception of forced and migrant labour to service the colonial tin miners, were central to the introduction of a new pattern of social relations of reproduction on the Jos Plateau. The European settlements on the Plateau required extensive lands to construct the infrastructural network of roads, bridges, railways and living quarters for the miners.

The labour conscriptions of the mid-1940s brought many migrant labourers into the mining areas, generating population increases without a proportionate increase in food production. Migrant labour from the Northern provinces and also from southern Nigeria flocked into the Plateau until the migrants numbered as many as the indigenous population and plural communities were constructed. Apart from the migrant labour, pastoral Fulani cattle herders aggravated the problem of environmental degradation and resource scarcity through the grazing of some farmlands, thus intensifying tensions between the Fulani pastoralists and the indigenous farmers.

Nigeria's National Question and Politics on the Jos Plateau

There is no evidence of 'de jure' or institutionalised discrimination on the ground of ethnicity or population size in Nigeria, although there are perceptions of social and political exclusion among the minority groups. Official policies and programmes are

directed at injecting social justice, equity, integrity and merit into the composition of the decision-making structures in the country, states and the localities, mainly on the principle of federal character, which is entrenched in the 1999 Constitution. The National Youth Service Corps scheme and the Unity Colleges also foster national identity among the youths. In spite of these efforts a sense of national identity is still low among Nigerians, as they generally first identify with their ethnic groups.⁴ New elite official alliances of the minority groups in the central and south zones have challenged Nigerian federalism, believing it promotes the interests of the majority groups and also the south-south zones.⁵

Since the return to civil rule, Nigeria has experienced numerous ethnic and religious conflicts, reflecting the lack of resolution of the national questions, associated with various identity differences. Throughout military rule in Nigeria, this national question was addressed through the creation of more states, and the principle of federal character,⁶ although the military itself reflected regional and ethnic dominance (by the north). The military structure in Nigeria favoured “hypercentralization” of power and resources at the expense of the states. It was during military rule that the secessionist movement in the Niger Delta area assumed a more violent form, owing in part to the lack of consultation with the aggrieved population there and excessive use of coercion by the military. Force was regularly used by the state to check ethnic agitations, creating a false impression of peace.

The return to civil rule in 1999 provided different ethnic and regional groups in Nigeria opportunities to compete, bargain and negotiate for power and resources under a constitutional arrangement that concentrates power and resources in the centre. Since then the demand for the reconceptualisation of Nigerian federalism has been invoked in four instances. The imposition of Sharia law in the North was one; the demand by some states from the South for a state police force was another. The court action against the federal government of President Olusegun Obasanjo by some state governments over the system of revenue allocation questioned federalism, just as was the agitation by social movements in the Niger Delta for autonomy over the resources derived from their area. Fourthly, the rise of ethnic militia in the Nigeria polity poses a direct challenge to the power of the Nigerian federal state over the monopoly over force and violence.

Ethnic nationalism poses a major challenge to governance in Nigeria, since the response of the State to ethnic, religious and other forms of identity conflicts has been inadequate. In Plateau State, for example, the Yelwa conflicts and, to some extent, the general insecurity in Plateau state, led the federal government to impose a six-month, state of emergency in the State on 18 May 2004 and the removal of Governor Joshua Dariye, who was replaced with a former army general, Chris Ali. Prior to this a presidential committee headed by the Emir of Zazzau, Shehu Idris, charged with investigating the conflicts had held several

'peace meetings' while the President from Abuja engaged stakeholders from Plateau, notably ethnic and religious leaders. However, the Plateau Patriots⁷ alleged that the decision to impose a state of emergency in Plateau State was influenced by the Muslim community, especially the Council of Ulama, and the rumour of President Obasanjo's alleged discrimination against the indigenous groups in Plateau.

In some circles in Plateau State it was alleged that President Obasanjo was not interested in peace and security, but a 'hidden agenda' of the federal government.⁸ Key informants in Plateau State justified this perception by citing several reasons. The first was that other conflict-hit states such as Kano and parts of the Niger Delta region did not experience a state of emergency.⁹ They also pointed out that the implementation of the State of Emergency had already commenced before the consent of the National Assembly was sought. Hence, while the State of Emergency was lifted in November 2004, and Governor Dariye reinstated, the situation in Plateau State, remains far from peaceful, with the uneasy peace being sustained through the military presence.¹⁰

Nigeria held its third transitional and second civilian administered election during the first quarter of 2007. With regard to election related conflicts in Plateau state, politicians from the various ethnic and religious groups intensified their mobilisation along the lines of the established resource conflicts referred to earlier, into two opposing camps along ethno-religious differences.

The Jos North Local Government Area (LGA) which has the largest concentration of Hausa-Fulani in Plateau state is the hottest spot for indigene/settlers conflicts, given that the 'indigene' groups accuse the Hausa-Fulani 'settlers' of 'importing' large groups of people from outside the ward to enhance their prospect of electoral victory in the local primaries.

Land and resource conflicts tended to arise from a system of governance in Plateau State which is largely unaccountable to the general public, whereby government institutions at all levels in the state were poorly staffed and managed and could not deliver on their mandates. Corruption was endemic and deeply entrenched in every aspect of public life in the state. Salaries and allowances were owed to civil servants, most of whom had to resort to various forms of corrupt and illegal means of livelihood. The Plateau state became notorious for tolerating 'black marketers' of petroleum products, which made life difficult for the ordinary people in the state, in order to gain the political support of the elites. During the period of the State of Emergency, Governor Dariye, was arrested in London over alleged money laundering. The Economic and Financial Crimes Commission (EFCC) had instituted legal action against the Governor over alleged economic and financial crimes. But it all came to nought because of the immunity clause in the Nigerian Constitution that protects the president and all governors from public persecution while in office.

By the close of 2005 things had changed, the Plateau State House of Assembly resolved to conduct a full investigation into the allegations of financial crimes against the governor, but this too was after the re-submission of the petition by EFCC for Governor Joshua Dariye to be investigated. Also, the successful impeachment of DSP Alamiyeseigba, former governor of Bayelsa State, and also Governor Rasheed Ladoja of Oyo State, over alleged financial crimes gave EFCC fresh zeal and courage to pursue the case of corruption against Governor Dariye. Governor Dariye and his aides put up a strong resistance no doubt. For example, some of the EFCC officials that came to investigate the case were 'arrested' and beaten up by people close to Governor Dariye. At the same time, some disciples of the governor took recourse to blatant blackmail against Mallam Ribadu, claiming that he was only carrying out the bidding of his boss – President Obasanjo. There is another version of the blackmail: that Ribadu's EFCC was being used by the Hausa-Fulani to destabilise Plateau State which is dominated by Christian minority groups. The supporters of Governor Dariye and those of his political opponents were regularly involved in violent confrontations which further aggravated tensions in the state and diverted attention from the delivery of public services.

The introduction of the Sharia legal code in twelve states in northern Nigeria brought about another wave of migration across northern Nigeria, especially in central Nigeria.¹¹ Nigeria's 1999 Constitution provides for Sharia courts to consider civil matters, but its penal code only applies to Muslims, and non-Muslim who voluntarily consent to be tried under Sharia. The threat of its imposition has caused concern among non-Muslims in several states of northern Nigeria, and led to violent clashes between the Christian and Muslim communities.¹² At different times, the Jos metropolis and other towns on the Plateau have been experiencing increased demographic pressures from displaced persons, especially Christians fleeing from conflict areas, notably Kaduna, Bauchi, Taraba, Nasarawa and Benue states. In the context of competition for scarce resources, these pressures have further aggravated ethno-religious tensions.

Ethnic and cultural solidarity over perceived insecurity and, competition over resources and power allocation, also entails support from the Diaspora. In African ethnic diasporas, 'individuals are not perceived as being meaningfully and instrumentally separate from the (various) communities to which they belong', but rather are 'placed within the family, kin and community networks from which (s)he is issued'. Thus, whenever such individual or his/her group perceives insecurity or threat to the collective interests of his/her group, 'the ordinary individual' and his/group have always sought for support from kinsmen and women from wherever they are found, within or outside state frontiers.

The various groups that emigrated to Jos and other locations in Plateau state from their various 'original home' still maintain close contact with their

ethnic base. Indeed, judging from the political party membership of the Hausa-Fulani elites, their kith and kin in the 'core north' provide political and spiritual guidance, and have shielded the Hausa-Fulani community from threats to their security, especially in times of conflicts as was experienced in Plateau State. The catalogue of assistance to Plateau State that came mostly from the northern states to help the victims of Yelwa conflict speaks volumes. Major-General M. C. Ali, as sole administrator of Plateau State, reported that several million Naira were provided by Kano (N 12 million), Jigawa (N 6 million), Sakata (N 10 million), Bauchi, Kebbi, Zamfara, Gombe and Imo States. The Islamic religion, which is predominant in the 'core north', and among the Hausa-Fulani in Jos, has further helped to consolidate kinship relationships.

Identity and Citizenship Politics

The ethnic groups on the Jos Plateau exist in two broad categories: The first are those that claim to be the 'original owners of the land' or original inhabitants of the area, and who refer to themselves as 'indigenes'. This category includes the Berom,¹³ Afizere, Anaguta, Taroh, Goemai, Irigwe, among others. The second category usually referred to as 'settlers' or 'strangers' especially by the 'indigenes' are mostly the descendants of early Hausa-Fulani immigrants to the Jos Plateau. The Hausa-Fulani were part of the migrant labour that came into the tin mines of Jos in the 1940s mainly from Bauchi, Benue, Borno, Kano, Katsina, Niger, Sokoto and Zaria. It is only occasionally that other ethnic groups such as the Igbo and Yoruba (from Southern Nigeria) are referred to as 'settlers'.

The Constitution of the Federal Republic of Nigeria (1999) in principle protects the rights of all citizens wherever they find themselves. However, the concept of 'indigene', which was introduced for the first time in the 1979 Constitution to ensure effective representation of diverse groups, was vaguely defined in the 1999 Constitution. In effect, questions like who an indigene is, and what rights accrue to them, are imaginary constructs in the minds of people. These imagined values have gained ground among the various groups on the Jos Plateau, and these define the direction of cooperation and conflicts among the groups.

The categorisation of the peoples on the Jos Plateau as either 'indigene' or 'stranger' is associated with the logic of colonialism generally, and more importantly the need to meet the labour demands of a growing colonial tin-mining economy on the Jos Plateau, which led the British to institutionalise migrant labour. This created segregated communities of natives and migrant settlers. Today, the words 'settlers', 'non-indigenes', 'strangers' and 'invaders' are used regularly and interchangeably by the indigenous groups to refer to the descendants of early Hausa and Fulani migrant labourers that came to the tin mines of Jos in the 1940s. While some members of the Hausa-Fulani community

Table 2.1: Ethnic and Cultural Groups on the Jos Plateau

Location on the Jos Plateau	Ethnic Groups	Population Estimates (1991 National Census)	Dominant Religion among groups
Barki-Ladi LGA	Berom; Gashish; Ron- Kulere; Hausa	118, 096	Christianity (Muslims are in the minority)
Bassa LGA	Miango (Irigwe); Rukuba; Amo; Chawai; Buiji;Jere; Lemoro;Gusu; Chokobo;Hausa; Fulani.	112,793	Christianity (Muslims are in the minority)
Bokkos LGA	Ron; Kulere;Buturu	130,000	Christianity
Jos East LGA	Afizere;Hausa;Fulani	115,000	Christianity (Muslims are in the minority)
Jos North LGA	Berom;Anaguta;Afizere;Hausa; Fulani	450,000	Christianity (Muslims are in the minority)
Jos South LGA	Berom;Hausa;Fulani; Igbo; Yoruba;Miango (Irigwe)	200,000	Christianity (Muslims are in the minority)
Kanam LGA	Bogghom;Jahrr; Ngas;Tarok;Hausa;Fulani;Kantanawa	178,309	Christianity (Muslims are in the minority)
Kanke LGA	Ngas; Tarok; Sayawa; Burumwawa; Hausa;Fulani	63,018	Christianity (Muslims are in the minority)
Lantang North LGA	Tarok;Ngas;Igbo;Yoruba; Oemai;Hausa;	109,952	Christianity (Muslims are in the minority)
Lantang South LGA	Toarok; Ngas; Kwalla Youm;Montol; Mwaghavul	53,215	Christianity (Muslims are in the minority)
Mangu LGA	Mwaghavul;Pyem;Jipal;Chakferm;Mupum;Berom;Afizere;Rumada;Hausa ;Fulani	203,514	Christianity (Muslims are in the minority)
Mikan LGA	Montol; Garkawa; Youm; Telh;Piapung; Hausa;Fulani	44,000	Christianity (Muslims are in the minority)
Pankshin LGA		105,700	
Qu'an – Pan LGA	Bawl; Doemark; Goemai; Kwak-Lak;Merniang, Namu, Kwande, Kwalla	180,000	Christianity (Muslims are in the minority)
Riyom LGA	Brerom;Atens; Hausa;Fulani	64,916	Christianity (Muslims are in the minority)
Shedam LGA		217,170	Christianity (Muslims are in the minority)
Wase LGA	Hausa, Fulani;T arok;Jukun;Basharawa;Bogghom;Burum	136,593	Islam(Christians are in the minority)

deny the claims by the indigenous groups that they are the 'original owners' of Jos Plateau, others advocate for mutual respect for the rights of all groups – indigenes and settlers alike. Their logic is that while the indigenous groups should not be denied their claims, their (settlers) ancestors came to the present Plateau state when there was no nation-state called Nigeria which now provides the context for the definition of a Nigerian citizen (as against indigene).¹⁴

The problem of indigenes/settlers is better understood in historical perspective. The effective integration of the emirate system into the British colonial administration in northern Nigeria created problems for non-Islamic groups. The system of indirect rule operated in northern Nigeria with recognition and respect for the Emirate system which established the Hausa-Fulani hegemony. The non-Muslim communities were not so lucky with the British colonial administration that forced them into subjugation, alongside the imposed emirate system. The system of native authority was introduced to legitimize both the colonial administration and the emirate system, subordinating the traditional political institutions of the non-Muslim communities. Jos city, for instance, was 'founded' by the British who referred to it originally as the 'Hausa settlement of Jos'.

Two separate administrative units were set up in Jos: the native authority with headquarters in Naguta and the Jos Township. The Native Administration was set up in Jos with a non-native as the leader (the District Head), putting Hausa residents at an advantage, especially on such issues as the control of land allocation. In 1921 the divisional headquarters was transferred to Jos, and some radical changes occurred including the abolition of the Hausa District Head. But even then the administrative and court systems used Muslim principles and practices, until 1951 when the Chief of Berom became the Chief of Jos. The position of the head of the Hausa community was subsequently reduced to Magajin Garin. Thus, for the Berom and Hausa-Fulani on the Jos Plateau, it has been an age-long zero-sum-game relationship with respect to traditional titles and chieftaincy issues.

The institutionalisation of the stool of 'Gwong gwon of Jos' (Chief of Jos) located in the centre of Jos, close to Jos North LGA, stepped up the political profile of indigenous groups and projected the Berom as the 'owners' of Jos. But for the Hausa the movement of the traditional stool from Riyom to Jos North LGA undermined the Hausa-Fulani community's representation. Some members of the Hausa-Fulani community claim that their community once had their own traditional ruling institution—the Sarkin Jos (Ruler of Jos). But the reality today is that the Hausa-Fulani have no functioning traditional ruling institution, comparable to the Berom, the Oba of Yoruba (Chief of the Yoruba in Jos), and the Eze-Igbo (Head of the Igbo community in Jos).

Similarly, during colonialism the present-day Mangu LGA had two communities: the Mangu Halle which was dominated by the Hausa, who referred

to themselves as Mangu Hausawa and had more visibility than the Mangu Arna (Mangu of the infidels).¹⁵ The Mangu Hausawa dominated Islamic values ruled predominantly to the disadvantage of other cultural groups. For example, the village headship was limited to the Hausa. Things have since changed and the Mangu Hausawa are now facing serious competition with other groups for power and resources allocation.¹⁶ Also in Wase, the Hausa-Fulani community enjoyed dominance without any serious challenge from the other natives during the colonial era. However, by the late 1970s the non-Hausa-Fulani groups in Wase had begun to question the basis of Hausa-Fulani hegemony.¹⁷ Their questions included: who should collect rents on land and for whom? This formed the basis of resistance to the Furumi system that gave all land to the Emir of Wase, leading to tense inter-ethnic relations in Wase.

Therefore, land is tied to struggles and conflicts over indigeneity, since on the Jos Plateau, as in most African societies, access to land and ownership of land is the key symbolic index for determining 'indigeneship', among many ethnic and cultural groups. Many communal conflicts (past and present) centre on the settler/indigene questions of political representation, electoral competition and chieftaincy. These issues are regularly expressed through struggles over land resources, which they need to prove their 'indigeneship'.

Hausa and Fulani migration to the Plateau was also driven by growth of commerce, which they dominated until the arrival of the Igbo and Yoruba. Rivalry and competition for dominance of commerce has led to riots, beginning with the 1945 Hausa-Igbo riot in Jos. The Igbo were also part of the influx of early immigrants that came to Jos as part of the labour force for the colonial mining economy, and until World War II, they were mainly involved in mining, government, and related activities. That war brought a diversification of the economy, spreading the Igbo into activities such as transportation, lorry repairs, and trade in consumer goods. The Igbo population in Jos today is primarily engaged in commerce, including the importation of consumer and intermediate goods, estate ownership, transport (small and large-scale), the service sector, spare-part dealing, and retail trading. The Igbo's increased involvement in commerce has exacerbated competition with the Hausa and the Yoruba. Larger numbers of the Hausa-Fulani, Igbo and Yoruba in Plateau state pursue trading as a dominant means of livelihood, which they dominate in some commercial cities and towns (like Jos, Bukuru and Yelwa).

Competing ethnic communities organise trader-networks, which create trading monopolies in certain activities and services. The Yoruba dominate plastic products, the Igbo dominate automobile spare parts, 'ready-made' dresses, long-distance commuter transportation and *okrika* (used clothes); while the Hausa dominate petroleum products and long-distance trade in food items, kola nuts and livestock. This business structure has implications for inter-ethnic

relations in the Plateau state. In Jos and Bukuru this has led to protests along ethnic occupational lines or in solidarity with their parent ethnic or tribal unions. Activities of ethnic trading networks have not only consolidated the control of ethnic groups in the particular trade or service delivery they dominate; they have also served to support and advance the interests of their parent communities against other groups.

There has not been any major conflict between the Hausa-Fulani and the Igbo and Yoruba traders since 1945. However, with the growing interests of the indigenous communities in trade and commerce, they seek increased participation in activities or the sale of items that were regarded as the monopoly of non-indigenous groups. For example, there have been several disputes between the Hausa-Fulani and the indigenes over market stalls, shops allocation and other related issues. The 'indigenes' complained about not benefiting enough from the Jos ultra-modern market (otherwise called Terminus Market) compared to the 'settlers'.

Perceived injustice in the areas of political representation and appointments has regularly resulted in disputes between the Hausa-Fulani and the indigenes. The former are generally perceived by the latter groups as enjoying more visibility in the public sphere, and favoured by the federal government, especially during military rule. For example, the indigenous groups accused the Hausa-Fulani of using their 'connection' at the 'centre' (referring to the Nigerian federal government) to leverage power and resources in Plateau state,¹⁸ especially during the military era, when power was overcentralised, making the state an appendage of the federal government. Members of the Hausa-Fulani community deny being favoured by the federal government, and rather attribute their success in government and business to their determination to succeed in spite of all the odds.¹⁹ This claim by the Hausa-Fulani, however, has never assuaged the suspicion of the 'indigenes'.

Land and Resource Conflicts

The Structure of Land Conflicts on the Jos Plateau

In virtually all the tin-mining communities on the Jos Plateau land-related identity conflicts are the commonest (see Table 2). The activities of the Hausa-Fulani peasants, especially as they relate to land use (such as dry season farming) have always brought them into conflict with the Berom, Anaguta and Afizere, whose livelihood also depends on access to land and its natural resources. For example, on 10 April 1997, Gero, in the Jos South Local Government Area of Plateau State, experienced an eruption of a communal clash between the Berom and the Hausa-Fulani. A Plateau State Government enquiry established that the immediate cause of the violence could be traced to the farm of Alhaji Ibrahim Umaru, a dry-season farmer resident in Gero. However, it was noted that the

fighting was deeply rooted in the socio-economic and cultural history of the area. Such conflicts over resources have often served to bring up accumulated grievances and rivalry over political and economic power.

In September 2001 the city of Jos and some neighbouring towns and villages experienced violent conflicts that left a wide rift between the communities of ‘settlers’ and ‘indigenes’ throughout the Jos Plateau. This conflict started in the Jos metropolis and spread to other parts of the state, including the rural areas. The suspicion and disaffection caused by the conflicts have redefined relationships among the various ethnic and religious groups in the many towns and villages who sympathise with their kinsmen that suffered losses in the Jos conflicts. The reaction of many of these groups was to organize a replay of the Jos conflicts. Such was the case of Vom (near Kuru) when the Berom and the Hausa-Fulani clashed just a few weeks away from the 7 September 2001 violence in Jos. A cycle of revenge attacks between ethnic and religious groups engulfed the state.

Other places on the Jos Plateau that experienced violent sectarian conflicts include Wase and neighbouring communities in 2002 and 2003 and Yelwa in 2004. Most of the conflicts on the Jos Plateau between 2001 and 2004 seem to have spilled over from Jos, Wase and Yelwa. Wase is a largely Muslim community that experienced protracted violent conflicts between the Taroh and the Hausa-Fulani Muslims resulting in deaths, destruction of property, women molestation²⁰ and abuse of children.²¹ Women and children were reportedly used as sex slaves and workers on farms. There were accusations and counter-accusations by all the sides in the conflicts in Wase.²² In May 2004 Yelwa Shendam Area Council of Plateau State experienced a series of clashes between Christians and Muslims that left heavy casualties on both sides.

Table 2.2: Some Conflicts on the Jos Plateau (1945 -2005)

Month/Year	Main Actors	Issues Involved	Comments on Dispute Settlement
October 1945	Hausa and Igbo	Conflict over the sale of potatoes	Police intervention
May 1966	Hausa and Igbo	The coup of 15 January 1966	
September 1966	Hausa and Igbo	The coup of 29 July 1966	
April 1981	Inhabitants of Barkin Ladi,Mangu and Bokkos LGAs	Boundary dispute	Plateau State Government’s intervention through physical demarcation

1983	Ampang and Kerang Districts	Boundary disputes	Plateau State Government's intervention through the Traditional Council and LG Committee that resulted in physical demarcation.
June 1985	Fier and Pushit Districts of Pankshin and Mangu LGAs	Land dispute	Plateau State Government's intervention through the Boundary Commission for the purpose of proper demarcation of the disputed land.
April 1988	Students, the General Public and the Police	Removal of subsidy on petroleum products	Police intervention.
1988-1989	Bokkos and Manguna Districts	Boundary dispute	Plateau State Government's intervention.
1989	Barkin Ladi and Mangu	Boundary dispute	Plateau State Government's intervention.
April 1991	Azara and Wuse inhabitants in Awe LGA	Land dispute	Police intervention.
April 1991	Tiv and Doemak communities in Awe LGA	Land dispute	Police intervention
1991	Attakar and Gura in Barkin Ladi LGA	Dispute over farmland	Plateau State Government's intervention (but no resolution)
April 1994	Berom, Anaguta and Afizere groups versus the Hausa-Fulani in Jos.	Appointment of Alhaji Mato – a Hausa man -- as chairman of Jos North LGA.	Plateau State Government set up a Commission of Inquiry which submitted report that was not made public.
June 1996	Sabon Layi and Lohmak communities in Langtang North LGA	Land dispute	Langtang LG Council set up Committee on the Crisis (the report was never implemented)
February 1997	Sabon Layi and Lohmak communities in Langtang North LGA	Long-standing disputes over land matters, with the immediate cause of the conflict as the seizure of the drums of and the beating up of some Jat people at Lohmak.	Plateau State Government's intervention through setting up of Boundary Commission to demarcate the land appropriate and punishing the offenders in the conflict.

April 1997	Berom and Hausa-Fulani in Gero village of the Jos South LGA	Conflict over dry season farmland .	Plateau State Government's intervention.
April 1997	Mwaghavul and Pyem communities of Mangu LGA	Disputes over farmland	Plateau State Government's intervention.
September 2001	Hausa and Berom in Jos and the neighbouring towns and villages.	Settler-indigene question with some religious dimensions	Plateau State Government interventions and Federal Government intervention through the setting up of panels/committees.
2002-2003	Wase LGA	Violent conflicts over land and chieftaincy issues.	
2004	Yelwa LGA The clashes of 1 and 2 May 2004 in Yelwa were between Christians and Muslims left heavy casualties on both sides.	Tarah farmers and Fulani cattle headers over farmlands/grazing land. These clashes later assumed a religious dimension involving Christians and Muslims.	

The recent conflicts in Wase were not only about land ownership but also about the chieftdom and chieftaincy, which are symbolically related to the land ownership and indigeneship questions. For example, during one of the clashes, Taroh militia had invaded Wase with a plan to remove the Emir and replace him with the Chief of Taroh in Wase to prove their numerical strength over all other indigenous groups and settlers. This failed as indigenous groups such as the Boggom and Bashar perceived the event as act of arrogance on the part of the Taroh people.²³ At the same time, removing the Emir was viewed not only in a cultural context; it was interpreted by the Muslim indigenes of Wase as a affront on the Islamic/ jihadist tradition in which the Emir of Wase is the representative of the Sokoto caliphate to which all Muslims in northern Nigeria should defer.²⁴ Thus this action by the Taroh was violently resisted, first by the Hausa-Fulani population, and secondly by the Muslim indigenes. What began as an inter-ethnic clash later assumed religious dimensions bringing in other groups from neighbouring states. For example, the Jukun from Taraba State and Berom from the north of Plateau State came in on the side of the Christians, while the Sayawa and Jasawa from Bauchi State came into the Wase conflicts to defend fellow Muslims. Even as the Taroh were retreating, some groups in the neighbouring communities like the Kanam and Dengi would not have them stay for fear of reprisal attacks by the Hausa-Fulani. The Taroh communities elsewhere in Plateau State, especially

the Christian Taroh in Langtang North LGA where they constitute the highest concentration of the people as a group, also mobilised and attacked the Hausa-Fulani, Boggoms and also Taroh that are Muslims.

The reprisal attack against the Muslims in Langtang LGA was so intensive that today no single mosque stands erect in Lantang town, and the majority of Muslims have emigrated. Similarly, the Hausa-Fulani in Wase have declared war on the Taroh people regardless of their faith, Christian or Muslim, and no single church building is in sight in Wase.²⁵ Occasionally warring groups have given the impression of ceasing fire only to resume hostilities at the slightest provocation, as was experienced in January 2004 when about eleven people were killed at Mavo in Wase LGA. There are initiatives, such as the independent peace initiative and reconciliation committee which did well to resolve the conflicts in Wase and other places experiencing spillover of these conflicts. However, mutual distrust among the various parties is very deep, with a sense of loss among the various groups, especially among the Fulani population that were victims of cattle rustling by the Taroh. These have made the task of reconciliation very difficult. Rather parties in conflict looked for new battle locations as experienced in the conflict that erupted in Yelwa (a trading town, 125 miles from Jos city), first in February 2004 when some Fulani gunmen were allegedly on a revenge mission over the rustling of their cattle, and later in May 2004 when the Taroh militia struck in Wase against the Hausa- Fulani in a more organized counter-attack.

Yelwa and other villages around it have long-running disputes involving several ethnic groups over contested claims ranging from ownership of land and resources, to political representation or appointment, rights of rulership and citizenship within the Yelwa community and its surroundings. These ethnic groups include the Geomai, the majority ethnic group in Shendam LGA that has both Muslim and Christian population, the Jarawa, the Borghom and the Pyer, who are predominantly Muslim. The introduction of religion into ethnic conflicts, as in the case of the Wase conflicts, has the tendency to extend such conflicts to other locations, where the conflicts evoke more emotive religious sentiments that tend to overshadow the original causes which revolve around inter-ethnic struggles and competition over power and resources. It was this situation in the Shendam LGA that regularly brought the Taroh farmers and Fulani cattle headers into violent confrontations, such as was experienced in May 2004. The clashes of 1 and 2 May 2004 in Yelwa between Christians and Muslims left heavy casualties on both sides.

On May 11 and 12 2004, Muslims in the northern city of Kano organized a revenge attack on Christian's residents, killing more than 200 hundred people.²⁶ Most victims of the Kano reprisal attack were traders and government officials from the southern parts of Nigeria. Expectedly, some had to flee to Jos and other safe havens for Christians.²⁷ The Muslim victims, especially the refugees, fled to

locations in Nassarawa and Bauchi where camps were immediately created to take care of them. It was at this point that the federal government became more worried about the situation in Plateau, leading President Obasanjo to describe it as 'near mutual genocide', and accusing Governor Dariye for being 'weak and incompetent'.²⁸

Like in the other conflicts zones in the north-central region of Nigeria, the conflicts on the Jos Plateau relate mostly to land shortage, loss of land ownership and competing land uses. Although in theory all lands now belong to government (as provided for in the Land Use Act, 1998), the indigenous or customary land tenure systems, especially during the pre-colonial period, in which communities had control over land, had generated relative peace, with less intra-and inter-communal land-related conflicts. Prior to the 1978 land reform, the land tenure system in Nigeria was based on communal, kinship or family ownership. Individual land ownership was insignificant. Group ownership conferred on members of the land-owning group only the rights of use and ownership of land, subject to the prevailing traditions, norms, practices, and interests of that community. Colonialism undermined the indigenous land tenure system on the Jos Plateau, while the individualisation of rights in land was further consolidated by post-colonial state policies, such as the Land Use Act. Today, under this Act more land conflicts occur as communities deem the allocation of land and reallocation processes to be unfair, anti-community, or driven by profit motives. In many cases land disputes have led to extreme violence, including mass expulsions, displacement, destruction of property, and deaths.

Because land is now generally scarce on the Jos Plateau especially in the mining communities, farming as the predominant means of livelihood has become difficult. The shortage of land, results from the degradation of a large mass of land by mining. Illegal (informal) tin-mining activities have become rampant, especially among young indigenous men and women who are not engaged in dry-season farming as labourers, and this thrives because of new 'markets' in West Africa countries, such as Niger and Senegal. Most tin buyers from these countries speak either Hausa or Fulani (*fulbe*), which disposes them to linkages with their Hausa/Fulani kinsmen in Jos and elsewhere on the Plateau, who often serve as middlemen between buyers and the illegal miners. This business relationship is further strengthened by the fact that the 'foreign exchange business' on the Jos Plateau is dominated by the Hausa/Fulani, who facilitate the foreigners' transactions in Nigeria. The indigenous informal miners seem not to trust the Hausa/Fulani middlemen, making their relationship generally tense.

Another dimension of the conflicts on the Jos Plateau is the occurrence of violence in the mining communities between the 'illegal' miners and the local farmers. The illegal miners tend to open up more and more land and dig deeper holes (below 36 metres) to reach the metal, unearthing up to 6 million tonnes of

soil each year. This has further deprived local farmers of farmlands, leading not only to complaints but regular attack on the miners and their sponsors.

Farmers, Pastoralists and Traders: Indigenes and Settlers

While some Fulani people came early to the Plateau as migrant labourers in tin mining, most of the Fulani in the Jos Plateau came as nomads whose livelihood and culture revolved around cattle-rearing. Cattle grazing by some Fulani headers brought them into conflict with indigenous communities during the colonial period, but these were controlled by the colonial authorities. Ownership of cattle among the Fulani has great cultural value today as it was in the past, including among the Fulani elite on the Plateau, who engage their kinsmen in the rural areas to maintain their herd.

The Fulani population in the Plateau has increased significantly, as have their cattle. The seasonal movement of the Fulani herdsman to and from the south is increasingly being short-circuited. Rather than pass on to the north while coming from the south, more now stop in the north central region in preference to the drought-stricken north. Correspondingly, their cattle grazing, as well as other economic activities, especially those relating to land use have now expanded, increasing the potential for conflict with local farmers over land. In some places in Jos South, Riyom, Barkin Ladi, Wase, Langtang, and Shendam Local Government Areas, Fulani herdsman compete with the indigenous groups over access to land and natural resources, resulting in constant violent clashes.

The Hausa have a long history of vegetable gardening on the Plateau since the 1920s, when Hausa labourers and traders grew vegetables such as Irish potatoes, tomatoes, cabbage, lettuce, spinach, carrots, peas and garlic for consumption by the European tin miners and for household use. Vegetable gardening has grown fast in Plateau State, through irrigation,²⁹ with the Hausa remaining dominant in the production and marketing of vegetables and fruits in the state, although other indigenous ethnic groups, notably the Berom are involved on a smaller scale. Hausa farmers use the mined-out ponds for irrigation purpose, with some using motorised water pumping machines on their farms.³⁰ They also have access to, cheap labour sourced from unemployed youths mainly from among the indigenous groups.³¹ This has increased vegetable profit margins and contributed to the relative prosperity of the Hausa compared to the indigenous groups.

More Hausa farmers from the core northern states have increasingly moved southwards because of desertification in recent years. Intensified seasonal migration to the north-central region, and the increased number of migrant farmers who have now established new settlements, have contributed to greater tension over the ownership of land used by the Hausa farmers for dry-season farming.

Environmental Conflicts and Land Reclamation Struggles in the Jos Area

After independence various efforts at restoring land damaged by the mines were initiated by the state in the Jos tin-mining area. For 67 years the mines had been controlled by foreign companies, and in 1972 the industry was nationalised. Yet little was done to clean up polluted streams and rivers in the mining areas, in spite of the Joint Consultative Committee on Mined Land (JCCML) set up in 1973. While government officials considered the need for land compensation for the indigenous communities in the environmentally-degraded areas, the broader environmental question was not sufficiently articulated. The policy to physically regenerate the destroyed landscape and soils of the Jos Plateau³² was not implemented largely because of the high cost involved in the reclamation and restoration of the mine lands. Both the federal and state governments failed to refill the mining ponds and lakes that littered the mining region of Jos Plateau.³³ Rather than reclaim the land and resettle the people, the government has instead been asking people to move without compensation or arrangements to settle them properly.³⁴

Official support for the 'positive utilization' of the ponds and lakes re-emerged in the last decade, courtesy of the interest and enthusiasm of retired military officers and bureaucrats and their foreign business partners. Individual entrepreneurs are now encouraged to purchase some of the ponds for modern fish farming and market gardening, including many retired military officers and bureaucrats who now live in Jos because of its good climate. Expectedly, their influx has further complicated the land question especially in the Jos metropolis where the cost of land has gone up. These elites and some foreign investors were in the 1990s carrying out feasibility studies and negotiating access to ponds with senior government officials. This bourgeois initiative of land reclamation and ownership is breeding new political and social problems (Mangwvat 1994), since the peasants in these mining communities are already feeling alienated from the scheme. The latter complain that given the financial and technical resources required for fish farming and irrigated market gardening, only the rich can afford to own or operate them. The initiative is not popular among indigenous people in the tin-mining locations, who had lost substantial parts of their farm and hunting lands to mining and feel frustrated. This forebodes potential and actual conflict.³⁵

Gender Aspects of Land Conflict

The above land shortages also affected women substantially, such that today on the Jos Plateau several women groups are mobilised mainly around land use and other related sustainable development concerns. The growing consciousness around resource shortage among women in the tin-mining areas is partly

attributable to the taking away of men from the lands to work on the mines and the creation of 'new' gender roles in the process of material production and capital accumulation. Berom women became directly involved in farm work as their men became sources of cheap labour for the growing tin mining industry, having lost the most fertile of their land to the tin mines, and relegated to cultivating marginal areas, using the bush-fallow-system. Farming on infertile land could not be without difficulties for women as customary norms did not guarantee them equal access to land with men (Baker 1955). Since then, women in these areas have to cope with increased soil erosion, water pollution and land shortage, while their access to credit and other resources such as irrigation water, fertilizers and technologies is very much restricted. Yet women still bear primary responsibility for household and community resource management.

Informal mining activities also have negative implications for gender relations and generate wider social conflicts in the mining communities. For example, in informal tin mining the role and status of women is downgraded, as the remuneration of female labourers on the minefields is significantly lower than their male counterparts, unlike in colonial times. Wage payments are irregular and at the mercy of the men who own the mine holes. The ultimate benefactor from the informal tin mining is the 'rich man' who owns a tin shed in the city, and whose agents 'sponsor' informal tin mining operations in the previously mined wells. These agents buy all the tin gotten from a particular 'hole' they sponsor, and make payments after deducting the 'cost of operations', which is initially granted as soft loans to 'diggers' (i.e. young men employed to dig the mine well). Usually these young men deduct their shortfalls from the women labourers, who can hardly fight back. Because those involved in the informal tin mining labour are mostly from the indigenous communities, they tend to be frustrated by having to work as hired labour on their land of inheritance. This feeling disposes them easily towards aggression against the city dwellers and others that they perceive as 'strangers' on the Jos Plateau. Hausa-Fulani dry-season farmers have always been the main target of their aggression.

Social Movements and Land

Land has always been the focus of organised resistance on the Jos Plateau, beginning with land disputes arising from British occupation and the dispossession of indigenous groups who were forced into resettlement camps. Early political awareness in the Plateau revolved around opposing mine-land utilisation and demands for the discontinuation of tin mining, as well as demands to expel Hausa and Fulani settlers. Agitation and the protests by the Berom against colonial authorities in the 1940s were about 'the everlasting infringements of their land rights'. For instance, Patrick Dokotri, one of the first generation of politicians from the Middle Belt, and a two-term member of the Plateau State House of

Assembly, entered formal politics to resist the privileges of the colonial British Administration in northern Nigeria, in terms of the system of land control, 'where the land tenure system gave foreigners and the British firms, absolute authority over land utilisation, to the extent that it brutalized and dehumanised our people; the Berom people'.³⁶

The quest for social and economic security has been a key motive for ethnic communities on the Plateau to mobilise identity into various social formations or organisations. During the colonial period, the formation of ethnic solidarity groups such as the Berom Progressive Union (BPU), Yergam Union, Middle Zone League, and Non-Muslim League constituted early forms of nationalism and land struggles. The Berom Progressive Union, for example, made representations to the government on behalf of the Berom people to protect their land which was threatened by environmental degradation arising from tin-mining activities. The mobilisation of Berom identity consciousness was reinforced through Christianity, which became dominant among the minority groups in the central region of Nigeria. Five out of the six original founders of the BPU were Christians, such that initially the suspicion was that the Union was set up to promote Christian principles and values. The Northern Nigerian Non-Muslim League formed in 1949 was influenced by the Christian religion in the identity formation of the indigenous groups.

The BPU later joined with other similar ethnic associational groups to form the United Middle Belt Progressive Union (UMBC), which was dominated by non-Hausa speaking people from northern Nigeria. Political party efforts, such as that of the Nigeria Peoples Congress (NPC), to penetrate communities on the Jos Plateau were resisted by the Berom members of the UMBC, who associated the NPC with the Hausa-Fulani; their contestants. Thus, membership of the UMBC was mainly for self-determination, defence of their land rights, assertion of their identity and demands for recognition, rather than any other ideological reason. The UMBC sentiment was simply a 'strong anti-Muslim and anti-Hausa-Fulani feeling', representing no more than a collection of ethnic associations united against the Hausa-Fulani.

During colonial rule therefore the Plateau BPU led other political movements to champion ethnic particularism, as pursued by its successor, the Jos Tribal Party. In the post-colonial era, the Berom Educational and Cultural Organization (BECO) emerged as the umbrella organisation for various Berom cultural groups, including the Berom Youth Movement (BYM), Berom Intellectual Revival Organizational Movement Club (BIROMC), Berom Elders Council, and the Berom Women's Association (BWA). The Berom elite, and indeed BECO, have remained very active in the Middle Belt Forum, which provides a platform for political elites. During the Second Republic, the Berom apparently maintained their political camp through massive membership of the Nigerian People Party

(NPP), which also had the largest concentration of the Igbo people, probably to challenge the Hausa-Fulani dominated National Party of Nigeria (NPN).

Many years of military rule undermined the operations of ethnic and cultural organisations, since successive military regimes were generally intolerant of social movements that advocated alternative forms of governance. Paradoxically, however, the military governors of the various regions (later states) were always directed from the 'centre' to consult with local groups before making political appointments. Interestingly, during this period many of the ethnic associations 'collapsed' into praise singers or appendages of the military rulers, whom they often lobbied to advance parochial and sectional interests. Each time a new military administrator was appointed for Plateau State, tensions in inter-ethnic relations, especially between the indigenes and the Hausa-Fulani, emerged over political appointments. The situation became so tense that in the late 1980s civil servants in Plateau State Government were banned from holding offices in ethnic and cultural organisations. During this period, the activities of BECO were drastically scaled down.³⁷ However, with the return of civilian rule in 1999 BECO bounced back to life along with other ethnic associations in Jos.

The visibility of ethnic and cultural organisation since then and their increased manipulation by the political elites of the various ethnic and cultural communities has further compounded the problems of mutual distrust and suspicion, feeling of insecurity, and lack of confidence in government among people. Organisations such as BECO increased their promotion of cultural consciousness among their ethnic group through cultural and social activities such as the annual festival of Nzem Berom. The Afizere and Anaguta communities also have their own cultural days. These platforms which flamboyantly display cultural practices have become a political tool for Berom political elites to introduce various political communications, and provide license for their manipulation of cultural resources, such as oral literature (songs, praise poems, proverbs and slogans) and humour, for political purposes. Many ethnic associations in Plateau State, which are involved in welfare promotion, such as the establishment of schools, hospitals, shops and other investments, have also enhanced identity formation and contributed significantly to the further consolidation of group consciousness among members. The Hausa-Fulani community is usually the targets of bottled anger packaged in the festivals.

In times of crisis, the Hausa-Fulani usually find comfort in the intervention of both the Jassawa Development Associations (JDA) and the Jama'atu Nasri Islam, both of which are linked to the larger Muslim family outside Jos. Some people are concerned that such links 'externalise' local conflicts, as has been alleged during the recent Jos crisis where 'friends. of the parties in the Jos conflicts were alleged to have facilitated the importation of arms into Jos city, alongside other relief for the victims of violence. Hausa-Fulani youths born in the Plateau formed the

JDA, which articulates political positions vis-à-vis the other groups, including demanding their birthright by seeking 'certificates of origin and indigeneship' from the authorities of the Local Government Council. This generation of Hausa-Fulani, apparently supported by the elders, often claims that it has no other place to call 'home' other than the Plateau. The Jassawa Development Association has, however, not been able to evolve developed structures, such as those of other ethnic associations, and a series of leadership crises has almost left JDA moribund.

At the broader strategic level, the content of most ethnic associations has been deepened by the establishment of educational institutions, and its extension to the economic spheres, through the establishment of ethnic-based financial institutions. For example, the Hausa-Fulani established the Jassawa Community Bank, while the Berom elite founded the Renuyel Community Bank and Bukuru Community Bank, which facilitate the accumulation of capital among members. These strategies have strengthened ethnic solidarity among the respective groups.

Apart from the Hausa-Fulani, the Berom, Afizere, Anaguta organisations, there are other cultural associations in the Plateau state, such as the Igbo Cultural Association (ICA), formerly known as Ibo State Union. This represents an umbrella association for all the Igbo tribal and clan groups in Plateau State, which has long-established structures. Early Igbo experimentation with ethnic associations in northern Nigeria has provided them an operation model, which has enjoyed relative stability, compared with other groups. For example, the Igbo community established the office of the Eze-Igbo, which functions as the traditional head of the Igbo and acts as the custodian of Igbo culture, customs, and traditions in Jos. He also mediates and settles disputes between the individuals and organizations (mostly home town associations) that comprise the ICA, such that the Eze-Igbo is fully integrated into the organisational structure of the ICA.

The Yoruba have the greatest number of hometown associations and development unions in the Plateau State towns and villages, and these represent all the Yoruba-speaking states – Lagos, Ogun, Ondo Oyo, Osun and Kwara. Town-based organisations include associations such as the Owo Progressive Union (OPU), Iseyin Progressive Association, and Ekiti Parapo. The Yoruba Community (Plateau State Chapter) serves as the umbrella for all these associations. Both ICA and Yoruba Community have in place structures and processes for mitigating conflicts among themselves and also with other groups.

The Use and Misuse of Identity and Values

Nigeria's ethnic and religious diversity is well pronounced. However, there are no accurate demographic statistics of the ethno-cultural or religious groups on the Jos Plateau. Nigerian people live through inherited indigenous institutions that

are defined by their differences rather than similarities and they hold significantly different perceptions of their respective histories, while their values often diverge on fundamental issues. For example, the indigenous Plateau communities believe that the Fulani-Hausa population is spreading fast due to their opposition to family planning issues.³⁸ Their prominence in both the state and federal government positions provokes concerns and insecurity among the indigenous groups, just as much as the Hausa-Fulani feel insecure.

Concerning land, while the indigenous groups argue that the indigenes are the original owners of the land, the settler communities have always argued that they are descendents of people who settled on the Plateau before the Nigeria State existed as an entity, and from which the meaning of citizenship, among other things, is derived. The Hausa-Fulani therefore see no reason for them to be denied 'Certificates of Origin' by officials of some LGA councils on the ground that they are non-indigenes. The Hausa-Fulani have always reacted against this act of social exclusion and had organised protests, which occasionally escalated into violence.³⁹ Attempts during the Second Republic to get the Hausa-Fulani to 'adjust positively to the natives' or engage in reconciliation, have not been successful. Even the then civilian Governor of Kano State, Alhaji Abubarkar Rimi promoted this, but the Hausa-Fulani in Jos opposed it.

The use of myths for ethnic mobilisation by the indigenous communities has become a regular feature. The BECO leads this practise, notably using the Berom Historical Publication (BHP), with the support of Berom intellectuals, from the Berom Intellectual Revival Organizational Movement Club (BIROMC), to preserve and project Berom identity.⁴⁰ The Hausa-Fulani elite have similarly engaged in the reconstruction of the history of Jos to authenticate their claim of being 'the founders'.⁴¹ Besides the myths of origin projected by the 'indigenes' and 'settlers', other cultural strategies devised by virtually all the various cultural communities to exclude others, include traditional political institutions. Since colonial rule, for example, the Hausa-Fulani settlers have projected the reign of Sarkin Hausa (1902-1947) in Jos as a period of peace and tranquillity. Meanwhile the Berom, using the title of 'the Gwong gwom of Jos (established in 1947)', project this as a symbol of their uniqueness as a group, and of course their claim of ownership of the land in Jos.⁴²

Manipulation of Religion

Land and resource conflicts in Nigeria are linked with sectarian religious affiliation especially in northern Nigeria where the relationship between religion and politics tends to be fused. Conflicts that have occurred on the Jos Plateau have been interpreted as 'conflicts among religious groups', reflecting the fact that the 'religious question' and 'identity question' are part of the larger unresolved 'national question' in Nigeria. Plateau state has a long history of religious intolerance by

both the Christian and the Muslims, which dates back to the colonial period when, Muslims believe, the colonialists interrupted the jihad and its southward expansion towards the Atlantic, leaving pockets of 'pagan' communities unconquered and unconverted to Islam, notably in the Middle Belt zone. The Christians on the Jos Plateau and elsewhere in the Middle Belt believe that their marginalisation and alienation began with the logic and practice of colonialism in northern Nigeria which helped to consolidate the Hausa-Fulani hegemony. The history of the indigenous ethnic groups in the Plateau state reveals a sustained resistance by the Berom, Afizere, Anaguta and Toroh tribes, of the fierce Muslim Fulani jihadist, Uthman dan Fodio and his army in the nineteenth century. This narrative portrays the Jos Plateau as an exclusively Christian region.

The practice of Christianity among the indigenous groups on the Plateau, especially the Evangelical Church of West Africa (ECWA), and Christ Church in Nigeria (COCIN), is evidently an expression of historical resistance to Islam and its social values. The projection of Plateau State as 'a Christian Island in an ocean of Islam' is used to encapsulate their conflicting interests with their Muslim neighbours. In this way, whatever the issue being contested, religion has been used to deepen inter-ethnic conflicts, as has been the case with conflicts over land and resources, which are 'coloured' by religious issues.

There are numerous faith groups spread all over the Jos Plateau in varying proportions. However, Christians are estimated to constitute about 80 per cent of the total population, while Muslims comprise 20 per cent of the total population. Yet the Muslims in the state comprise about 30-35 per cent of the total population in Jos North LGA, 50-60 per cent in Wase, 25 per cent in Kanam, 20 per cent in Qua'an-Pan, 15 per cent in Jos South, 15 per cent in Shendam, and 12 per cent in Bassa (see Table 1).⁴³ Thus, with the exception of Wase LGA, Christians are in the majority in all the LGAs of Plateau State, although the Christians share two orthodox denominations (ECWA and COCIN), which are headquartered in Jos. Churches in Nigeria and Plateau State are generally grouped under two umbrella organisations – Christian Association of Nigeria (CAN) and Pentecostal Federation of Nigeria (PFM).

Popular Muslim organisations and sects in the Plateau include the Jama'atu Nasri Islam (JNI), Izala Muslim Group, Shitte Muslim Group and Maitasine Group. The JNI is the umbrella organisation for all Muslims in Nigeria headquartered in Sokoto – 'the seat of the Caliphate', Sarkin Musulumi (Sultan of Sokoto).⁴⁴ It wields considerably powerful national influence in politics, and is recognised even by Christians. Many Hausa-Fulani in Jos identify with JNI which is perceived by many to be generally moderate in its practice of Islam, and which supports the social mobilisation of JDA.

The Izala, or the Jama'at Izalatil Bidiawa Iqamatus Sunnah (Movement Against Negative Innovations and for Orthodoxy) headquartered in Jos, is a group of

Muslim fundamentalists (led by Sheikh Ismaila Idris) that is characteristically radical and revolutionary in its mission, and is reminiscent of the late Sheikh Mahmoud Gummi's preferences. It emphasises the purification of Islam. The Maitatsine group has growing membership in Plateau State, and has become a concern for the security apparatus in the state since the 1980s, when internal disorder which occurred in some parts of northern states, in connection with Maitatsine group.⁴⁵

The Maitatsine group tends to favour the under-privileged against the rich and wealthy in the society. This explains their relative wide acceptance especially among the under-privileged class, which explains social and economic exclusion as the 'ungodliness' of the state. These contradictions underlie the violent clashes mobilised by various movements in the name of identity, alongside land and resource struggles.

The failure of the Plateau State Government to deliver public goods has alienated it from the people, who have increasingly taken solace in religion, to counter the lack of space in the public domain. Many Nigerians, especially the 'weak', constantly resort to 'primordial sentiments', such as ethnicity and religion, which mobilises a spiritual rejuvenation among the rising new religious social movements. In this context, the Shittes, Izala and Maitatsine groups, challenge the Nigerian State on issues of governance, justice and moral values and its unwillingness to tolerate dissent, or engage in dialogue with the Nigerian Islamist movement. Instances of violent demonstrations are common, and the relationship between religion and political competition is a constant aspect of the discourse, which could lead to a renegotiation of political space. Misplaced aggression against Christian communities has thus been common. This reflects unresolved issues among various ethnic and religious communities over political representation and control of resources, including land.

Concluding Remarks and Policy Recommendations

Over forty decades, successive governments in Nigeria have failed to resolve the land question. The Land Use Act (1978) has generated more conflicts over unfair, anti-community and profit-oriented land allocations to the disadvantage of poor people, leading to extreme violence, including mass expulsions and displacements of people, the destruction of property and deaths. Ownership and use of land are major sources of conflicts on the Jos Plateau, and these build on various land-related political conflicts generally found in Nigeria. Military rule had in the past suppressed the violent outbursts of aggrieved communities, while the return to electoral politics has seen the resurfacing of such conflicts. A land reform programme, including the review of the Land Use Act (1978) to address all the limitations and challenges of the present legal framework for land use and ownership, should be embarked upon.

Since the return to electoral politics in Nigeria in 1999, the country has witnessed escalation of communal conflicts over land and natural resources, and political power has reflected the 'indigene' and 'settler' contradictions. It is within this context that the various factions of the political elites mobilised ethnic and religious identities which resulted in the forceful exclusion of Nigerians who had settled outside of their places of origin for decades. The latter are regularly discriminated against by the 'indigenes', who refer to them as 'outsiders'. These so-called settlers who are ethnic or religious minorities in places like Jos Plateau have responded aggressively which has further complicated conflicts on the Jos Plateau.

The shortage of land on the Jos Plateau has continued to aggravate poverty among the population living in environmentally degraded tin-mining communities. In such places, the competition over land and related resources is very pronounced and, expectedly, has generated conflicts among the various ethnic and religious groups which, in turn, has affected the allocation and distribution of political appointments and other economic opportunities.

The conflicts on the Jos Plateau draw attention to recent population movements in northern Nigeria which were heightened by the influx of refugees from the Sharia states, escalation of long-standing conflicts, including conflicts between crop farmers and cattle headers, and the growing desertification and resource depletion in north-eastern Nigeria. At the same time, the influx of members of the richer classes into Jos metropolis, and the resultant scramble for land for fish or irrigation farming have contributed to scarcity of land on the Jos Plateau. This class-based development has continued to exacerbate inter-ethnic tensions, particularly between the 'indigenes' and 'settlers'. If not checked this is likely to lead to a class war. Already, the peasants in the tin-mining communities have regularly threatened to sabotage development projects on their land that do not directly address their needs.

Ethnic and cultural associations that promote ethnic patronage are the main vehicle for disputations over political representation and resource allocation, highlighting their purveyance of narrow interests rather than a broad developmental and democratic agenda. The proliferation of small arms and the concentration of ex-service men in central Nigeria have increased the number of violent conflicts in the Jos Plateau and the north-eastern border areas, since the social crisis there presents scope for the recruitment of the unemployed youths into ethnic militia by politicians, informed by cultural nationalism.

Many of the land-related conflicts on the Jos Plateau are also linked to economic stagnation and decline, inequitable access to public goods and social services, and the lack of transparency and accountability in governance. In this regard, the pool of unemployed frustrated young men with little or no opportunity for positive engagement on the Jos Plateau constitutes risk. In the context of fierce

electoral competition, they constitute a ready pool of recruits for ethnic, religious and political elites that may be, for instance, seeking re-election. Therefore a programme that will address youth employment on the Jos Plateau is urgently needed to address youth restlessness.

A few broad-based, multi-ethnic social networks such as the Plateau State Peace Initiative Coalition (PESPIC), Christian Association of Nigeria (CAN) and the Muslim/Christian Dialogue Forum (MCDF), working with international development partners, promote peaceful co-existence among the various cultural and religious groups. These efforts have slowly been yielding some success since 2001. Peace, however, requires a new social order: including a responsive state with adequate capacity to mediate social conflicts and mitigate the social contradictions in the society so as to create the enabling environment for the efforts of some of the progressive civil society organisations.

The citizenship question in Nigeria needs to be resolved. The resolution of the national question, and also the citizenship question requires putting in place appropriate policies and initiatives that guarantee citizens' rights. Thus policy options and initiatives should be designed to protect all citizens. The agitations by some parts of the country, including the central Nigeria zone, for a sovereign national conference of all nationalities have persisted with focus on such issues as the citizenship question and resource control. For instance, much of the ongoing discussion around the constitution is in many ways connected with issues of identity and the national question. Recently, the federal government sponsored a political reform conference which did not go down well with some sections of the country. These are indications that the citizenship question in Nigeria deserves more attention than it is receiving today. There is greater risk of more disruptive political turbulence when the public plunge into the fray of electoral politics. This will become more compounded when played out against a background of weak electoral institutions and underdeveloped political culture. Electoral competition is likely to heat up the body polity and more tension is likely to be created in inter-ethnic relations, which in turn will aggravate ethno-religious conflicts.

Notes

1. Occasionally peasants would engage in protests such as the militant opposition of the Bakolori farmers in 1980 to the Bakolori Irrigation Project, while the state intervened on behalf of capital, using official violence and intimidation including the brutal massacre of the rebelling peasants.
2. Interviews with inhabitants of Gyel, Foron and Du districts in Jos South Local Government Area in April 2006.
3. Archival sources from both the Jos Museum and the National Museum Kaduna.
4. Afrobarometer survey (Nigeria), 2001. The Afrobarometer is a survey research network that conducts regular polls of public opinion in eighteen African countries. For more information, go to <www.afrobarometer.org>

5. The Willink Minorities Commission (chaired by Sir Henry Willink) was set up to ascertain the fears of minorities and propose means of allaying them. Various nationalities in north central Nigeria had proposed the creation of a Middle Belt Region. This was opposed by the Hausa-Fulani dominated Northern Peoples Congress, arguing that the Northern Region would lose particularly in the Civil Service.
6. The first military government of General Aguyi Ironsi introduced a unitary system of government, but this lasted only six months. The administration of General Ibrahim Babangida set up a Presidential Committee in 1986 to provide direction on the national question, but nothing concrete came out of this.
7. The Plateau Patriots was a collective of intellectuals from Plateau State that constitute themselves into a pressure group to protest the imposition of the state of emergency in Plateau State by the Federal Government of Nigeria in May 2004.
8. Interviews with some politicians of Plateau state origin on 6 and 7 December in Abuja.
9. Interviews with some members of the Plateau Patriots, Jos in December 2005
10. On 30 December 2004, Governor Dariye banned the Council of Muslim Elders for inciting the public, and announced that government would only recognize Jamatul Nasril Islam (JNI).
11. Zamfara State was first to introduce Sharia penal code in January 2000.
12. In Kaduna on 21 and 22 February 2000 which resulted in over four hundred deaths. Serious retaliatory violence broke out in Abia, Imo and Akwa Ibom States when the bodies of some of the dead were returned to their home areas. There have also been disturbances in Sokoto.
13. The Berom people are the largest cultural group that originally inhabited the Jos Plateau and its immediate environments. Colonial sources refer to the Berom as 'pagans' who were 'subsistence farmers producing enough food for themselves but practically nothing for sale, and their customs, festivals and religious rituals are closely connected with the land and its fertility' (see Memorandum on Mr. Davies Farm Survey of the Gyel Area, Jos Division).
14. Interviews among the Hausa-Fulani in some parts of Anaguta village, and also in Delimi and Bukuru markets, all in the Jos North Local Government, 3-6 January 2006.
15. Mr. Adeyi Major, who lived his early life in Mangu Halle, provided this insight in an informal discussion about the changing power relations among the ethnic groups in Plateau state in Jos on 1 November 2005.
16. Informal discussion with some residents of Mangu Halle on 10 November 2005.
17. Interviews with people of diverse ethnic groups in Wase on 28 and 29 December 2005. These include members of the Hausa-Fulani community, Taroh, Jukun and Burum.
18. Interviews with some members of the Berom Youth Movement, Jos, on 22 December 2005. The dominant view among many indigenous communities in Plateau was that the Hausa-Fulani have always enjoyed prominence in the central government, especially since the colonial period – including the highest number of heads of state, both under the military and during civil rule.
19. Interview with some members of the Jassawa Development Association, Jos on 28 December 2005.

20. The involvement of women and children in conflicts was first experienced on a large scale during the Jos crisis of September 2001. The case of Wase was a gory experience. Women and children were reportedly used as sex slaves and workers on farms. There were accusations and counter accusations by all the sides in the Wase conflicts as to who first started it.
21. Idasa (Nigeria) estimate deaths from the August 2002 conflicts in Wase at 200 people, and that about 50,000 people were displaced. They estimate deaths of well over 500 people from the series of clashes after the August.
22. March 2003 conflict in Wase. During these clashes some 3,000 Fulani armed men were suspected to be mercenaries from Chad and Niger that invaded Kadarko, which has the largest concentration of the Taroh people in Wase. The Taroh are the second largest group on the Jos Plateau, after the Berom (See Table 1).
23. Interviews with Mr. Chom Bagu, Abuja, 6 December 2005. Mr. Chom Bagu, a citizen of Plateau State, is a conflict specialist with extensive experience in managing sectarian conflicts.
24. Interviews with some Boggom and Bashar people in Wase on 27-28 December 2005.
25. The Sokoto Caliphate was established following the Othman dan Fodio Fulani jihad of 1804. Leaders and loyalists were rewarded with territories within an emirate system under the control of the Sarkin Musulumi, the Sultan of Sokoto. The Wase emirate, which was part of this arrangement, was incorporated into the colonial administration of northern Nigeria. In post-colonial Nigeria respect for the emirate system is common among Muslims in northern Nigeria.
26. Informal interviews with Adeyi Major, a researcher working on Plateau politics and the author of a book on Chief Solomon Lar, a Lantang politician and the first civilian Executive Governor of Plateau State, on 4 November 2005.
27. The actual number of death toll could not be determined since government confirmed any of the figures that were cited in the media. However the information given by some Christians, and also emphasized by the Christian Association of Nigeria (CAN), declared that over one thousand people were killed. But the police was only able to confirmed thirty casualties. See *Africa Today*, June 2004, p.13.
28. Interviews with some Igbo and Yoruba people that played host to some of the Christian that fled from Kano on 19 November 2005.
29. 'Broadcast by His Excellency, Chief Olusegun Obasanjo, GCFR, on the imposition of a state of emergency in Plateau State', 18 May 2004.
30. This vegetable gardening has prospects in distant markets in Nigeria, bringing visibility to the Hausa dry-season farmers on the Plateau.
31. Interviews with some Hausa dry-season farmers in Bukuru and Du districts on 14 November 2005.
32. Interviews with young men and women engaged as labour on the dry-season farms in Bukuru and Du districts on 14 November 2005.
33. In Bukuru and Vom (both in Jos South Local Government Area) we saw traces of the programme of reforestation which dated back to the colonial period. Informants confirmed that the community regularly felled the trees for household wood energy, given that majority lack other means of energy for cooking.

34. Insight into government policies on reclamation of land was provided by Professor Monday Mangvat of the Department of History, University of Jos, who also provided other background materials during my initial field work between 1996 and 2000 in various locations in the Plateau State.
35. Evidently, the Nigerian government lost interest in the tin industry and areas since Nigeria earned less than 0.5 per cent of its foreign exchange from tin from the 1970s and production fell from 10,000 tonnes of tin ore annually then to 3,000 tonnes in the 1980s and 500 tonnes in the 1990s.
36. Interviews held in some locations in Barkin Ladi in November and December 2005.
37. See oral contribution of Patrick Dokotri in Y.B. Usman, and G.A. Kwanashie, (eds.) (1995) *Inside Nigerian History, 1950 – 1970,: Events Issues and Sources*, Ibadan, 1995, p. 32.
38. Interview with Samuel S.Gondongs, former chairman, Caretaker Committee of the Berom Youth Movement, Jos, 23 December 2005.
39. The Hausa-Fulani Muslims are generally not known to publicly support family planning programmes. Of course, the Catholic Church also does have reservations about family planning. However, besides the religious dictates, the Muslim population in Jos has been accused of uncontrolled procreation as a strategy to boost its population.
40. Interviews with members of Hausa-Fulani community at the Naraguta Leather Works, Jos on 30 December 2005, and also with some Hausa-Fulani leather works traders on Ahmadu Bello Way, Jos on 31 December 2006.
41. Interview with Dr. Pam Sha on 4 January 2006 in Jos. Dr. Sha is a member of BECO, and he is actively involved with the Berom Historical Publications which has published two volumes on Berom history and culture.
42. Interviews with Dr. Mohammed Gambo, a Hausa-Fulani elite, on 4 January 2006 in Jos. His views provided useful insights in this regard.
43. Interviews with a crop of Berom elites in Jos on 29 December 2005
44. These figures are based on informal discussions with residents from the various LGAs of Plateau State while author was conducting field work in the State between November 2005 and mid- January 2006.
45. The Sultan of Sokoto is the direct descendant of Othman Dan Fodio, the Islamic scholar, who led the Fulani jihad of 1804 that established the Sokoto Caliphate. In modern Nigeria the Sultan still commands respect and wields significant political and religious power, especially in northern Nigeria.
46. For example, the Kano 'religious disturbances' of December 1980, involved the armed conflict led by an illegal alien named Muhammed Marwa (Maitatsine) from Cameroun, with his followers from neighbouring countries.

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3

Logiques d'héritages et superposition de droits : conflits de pratiques dans l'Afrique contemporaine le « légitime » contre le « légal » ?

Abderrahmane N'gaïde¹

En période de grande ou totale transformation, alors que tout est remis en mouvement, le pouvoir politique doit négocier avec l'incertitude, affronter des situations dont le contrôle lui échappe ; il n'a pas la possibilité de réussir évidemment et ses échecs cachent ou dévaluent les résultats de son action ; il paraît absent, ou faible dans son agitation, au gré des conjonctures (Balandier 1985:11).

La majeure partie du territoire actuel de la région de Kolda abritait vers la fin du XIXe siècle un royaume connu sous le nom de royaume du Fuladu², fondé par d'anciens esclaves qui se sont révoltés contre les Mandingues et, du même coup, se sont libérés de leurs anciens maîtres².

Les étendues de terres dont la fertilité est légendaire étaient peu mises en valeur au début du vingtième siècle. Cette faible mise en valeur est non seulement liée au déficit du peuplement, mais aussi aux exigences de la principale activité des populations peules : l'élevage.

Le peuplement de la région répond largement à une migration soutenue qui s'est étalée sur plusieurs siècles. Et la mosaïque ethnique, caractéristique de la contrée, résulte d'une superposition de peuples ayant cohabité soit en paix, soit en guerre. Toujours est-il qu'une civilisation brillante allait naître de ce brassage des ethnies³. Les rapports interethniques vont être facilités par la perméabilité des « frontières⁴ » et par une complémentarité progressive des règles de gestion et d'exploitation des domaines fonciers. L'abondance du pâturage et l'existence d'un réseau hydrographique dense permirent aux populations de s'établir et de

consolider leur assise économique et sociale dans les provinces qui les accueillirent. Leur implantation fut facilitée par leur mode de vie qui demandait de vastes espaces. Elles s'installèrent tout au long des mares et des cours d'eau avec leurs troupeaux de vaches. Elles se sédentarisèrent progressivement et se consacrèrent à une agriculture peu expansive. Comme beaucoup d'autres peuples nomades, les Peuls du Fuladu se déplaçaient tout au long de l'année pour suivre leurs troupeaux, mais revenaient sur leurs anciens lieux de leur résidence. Leur sédentarisation va débiter de manière effective avec la naissance du royaume⁵.

Comment les populations africaines et sénégalaises [exemple des Peuls de la région de Kolda] ont-elles réagi aux législations post-coloniales et « réactivé » les modes de gestion antérieurs afin de tenter de préserver leurs droits, leurs organisations, en un mot leur citoyenneté conçue dans la diversité *instituant* des communautés qui composent l'Etat ? Quels sont les enjeux qui se dessinent et quels types de contradictions font-ils naître au moment où la décentralisation est « contée » comme le seul mode qui peut garantir une participation citoyenne ? Quel rôle ce « front » du refus joue-t-il dans les transformations sociales et politiques qui s'observent dans cette région du Sénégal ? Quelle peut en être la leçon, exploitable, pour l'ensemble des « régions naturelles du Sénégal » ? Quels enseignements pourrait-on en tirer pour une étude comparative pouvant servir de baromètre d'observation des autres conflits qui surgissent un peu partout en Afrique et qui contredisent les héritages ? Quel type de bilan pourrions-nous faire des législations qui n'ont pas été renouvelées depuis les indépendances et qui semblent être le soubassement des dysfonctionnements actuels ?

Ce texte tente de mettre en lumière les conflits de pratiques qui perturbent les relations intercommunautaires, malgré les réformes juridiques et politiques qui ont pour vocation d'harmoniser les rapports entre « autochtones » et « allogènes ».

Une politique de l'élevage en contradiction avec la réalité du terrain⁶

Les Peuls ont toujours alimenté les fantasmes et continuent encore aujourd'hui de les vivifier. Les théories les plus fantaisistes ont été développées sur leurs origines supposées⁷, leurs modes de vie et leurs organisations sociale et économique. Comme tous les autres peuples nomades, ils ont été longtemps victimes de préjugés négatifs qui font d'eux des « errants » dans une nature qu'ils ne maîtrisent pas avec des bêtes qu'ils accumulent par pur prestige, sans développer un esprit entreprenant qui ferait de leur troupeau une source de richesse et non de simple vanité⁸. Citant Hill et Randall, Edmond Bernus nous dit que ces peuples sont « des populations à part, des groupes isolés qui, du fait qu'ils sont nomades et se consacrent à l'élevage, sont fondamentalement différents des autres groupes sociaux. Ceci a eu tendance à conduire à des approches théoriques qui étudient le concept de la société pastorale par opposition à celui de la société non pastorale avec des principes d'organisation et de comportement différents » (1990:267). Les

Peuls de Kolda n'échappent pas à ces grilles de lecture fondées sur des stéréotypes⁹ qui se sont, avec le temps, érigées en règles presque immuables.

Les populations pastorales en général et peules en particulier ont toujours posé de sérieux problèmes au pouvoir colonial du fait de leur « instabilité ». En effet, le Peul est en transhumance permanente, suit ses bêtes et fuit devant l'adversité politique et la rigueur du climat. Cette mobilité géographique répond largement au mode de vie de ces populations. Et pourtant les populations peules de la région de Kolda sont plus ou moins stables et allient l'élevage à l'agriculture¹⁰, même si c'est à échelle réduite. Dans l'esprit du colon, le Peul se « déplace sans raisons apparentes »¹¹. Il est vérifié que les mouvements incessants d'une frontière coloniale à l'autre est une stratégie pour se soustraire aux différentes réquisitions pour les travaux, à la rigueur des impôts et des recensements¹² ou au refus de se soumettre à la politique agricole menée par les colons, comme le constate Mahmood Mamdani, pour d'autres peuples de l'Afrique de l'Ouest.¹³ La taxe sur le bétail constituait au Fuladu un élément fondamental pour non seulement contrôler et fixer les populations sur le territoire sous domination française, mais aussi suivre l'évolution des troupeaux. Dans l'esprit du colon, qui dit contrôle du troupeau dit contrôle de cette population mobile d'une saison à l'autre. Les colons n'avaient pas pris conscience que

les desseins des autorités et des éleveurs nomades coïncident rarement, d'autant moins que ces derniers ne sont presque jamais considérés comme porteurs d'une expérience utile, d'une pratique positive et d'une connaissance du milieu susceptibles d'être prise en compte (Bernus 1990:274-275)¹⁴.

La pénétration coloniale en Haute-Casamance s'est faite tardivement. Plusieurs facteurs expliquent ce retard dans la conquête de cette partie de la colonie du Sénégal et de ses dépendances. La navigation sur le fleuve Casamance n'était pas aisée, l'existence de forêts denses ainsi que l'hostilité des populations locales limitaient la progression coloniale. Ce n'est qu'en 1883 que la France signe un traité de protectorat avec le roi du Fuladu, Musaa Moolo. Il mettait ainsi tout son territoire sous le contrôle de la France. Ce traité ôte à Musaa Moolo toute souveraineté sur le territoire qu'il est censé administrer. Son pays et ses terres étaient désormais soumis à la législation française. Mais c'est seulement en 1903, après son retrait en Gambie, que l'administration coloniale met en place les cantons chargés de gérer et les populations et leurs activités quotidiennes.¹⁵

Pourtant dès 1899, la colonie considère la province du Firdou¹⁶ comme le futur grenier de la Casamance¹⁷ à cause de la richesse de ses terres et des différents marigots qui l'arrosent. Au lieu de s'appuyer sur les pasteurs peuls de la région, la puissance coloniale française, en concurrence rude avec les Anglais et les Portugais, déploie une politique de peuplement pour renforcer l'agriculture de rente (l'arachide) qui commence à donner des résultats encourageants dans les régions centrales de la colonie. Pour mettre en valeur les potentialités agricoles

de la région, il est nécessaire de mettre en place des stratégies d'encadrement des populations qui correspondent aux besoins et objectifs de la métropole. La politique de l'élevage suit les courbes de la progression de la machine coloniale, de sa littérature et de ses différents errements. Durant toute la période qui s'étale des années 1930 aux années 1940, la présence des vétérinaires sur le terrain africain coïncide avec la rédaction de monographies ethnographiques sur les indigènes d'Afrique. Au-delà des études purement techniques qu'ils doivent mener, ces vétérinaires militaires déploient des efforts énormes pour décrire les mœurs africaines afin de faire œuvre utile et de produire des travaux pseudo-scientifiques non seulement sur le bétail, mais aussi sur ceux qui n'en sont que des *propriétaires passifs*. Ceci explique, en partie, toutes ces envolées critiques sur les pratiques des éleveurs africains de manière générale et sur les populations peules en particulier. Ils sont décrits comme des nonchalants au point qu'un vétérinaire n'hésite pas à les comparer à des reptiles :

... il est curieux de remarquer, dit-il, la ressemblance frappante entre les nègres et les reptiles sous certains rapports : ces mouvements paresseux, indolents, cette somnolence constante qui semble leur appartenir en commun ; jusqu'à la nuance de l'enveloppe cutanée ; cet ineffable bonheur de se vautrer sur le sable chaud au soleil (Landais 1990:59).

Ces considérations, qui vont au-delà de la déontologie du vétérinaire, sont partagées par tous les administrateurs coloniaux impliqués dans les tentatives de soumettre les indigènes aux lois inspirées de celles de l'Occident qui nient toute autre forme d'organisation sociale qui emprunte un autre chemin que celui qu'il souhaite imposer. L'élevage, comme tous les autres secteurs, va souffrir de ces méthodes d'analyse et de ces conclusions hâtives qui alimentent les rapports coloniaux tout au long de la période coloniale. Ce n'est que vers la fin des années 1940 que des budgets seront alloués et que les vétérinaires disposeront désormais « d'un réseau d'infrastructures et de moyens humains impressionnants » (Landais 1990:63). Mais toute la politique tourne autour de la recherche. Les dimensions sociales sont évacuées au point qu'on peut constater une « absence totale, dans l'approche des problèmes de développement de l'élevage africain ». Les recherches se concentrent plus sur l'animal en tant que tel pour son amélioration aux fins de profiter de la commercialisation de sa viande et de ses dérivés (cornes, ongles, peaux).

Une conférence des chefs de services de l'élevage se tient pour la première fois en 1951 à Bamako¹⁸. Le discours du représentant du Haut Commissaire tourne autour de la révision de toute la politique en tenant compte des « exigences de la civilisation moderne » (Landais 1990:63). La santé de l'animal et son amélioration préoccupaient plus que la mise en place d'une véritable politique de développement de l'élevage africain. Il fallait mettre en place une « politique du «bœuf» » et créer « la Ferme africaine ». Pour réaliser ce programme, le colonisateur

français a pensé qu'une politique hydraulique¹⁹ est nécessaire et qu'elle sera à la base de la valorisation du bœuf africain. Il fallait aussi amener l'éleveur africain à gérer « son bétail, non en patriarce, mais en producteur » (Landais 1990:64). L'accent est mis sur la production afin d'alimenter, en viande, les centres urbains de la côte atlantique, voire de la métropole. Suit une panoplie de mesures à prendre comme « l'aménagement de centres d'abattage, d'abattoirs industriels, de frigorifiques... » (Landais 1990:64).

Durant toute la période, l'option productiviste/mercantiliste de la métropole perturbe davantage la société peule du Fuladu. Seules les orientations politiques et économiques de la colonie comptent dans cette région en profondes mutations sociopolitiques. Dans son plan de développement, elle marginalise un élément important dans l'organisation socio économique des populations de la région. En effet, l'élevage n'est point pris en charge durant toute cette période qui couvre la moitié du XXe siècle. Il reste à l'extérieur du modèle économique colonial, d'abord parce que son produit n'est pas destiné aux marchés de la métropole, et ensuite parce que les préjugés jouent en sa défaveur. Ce n'est que vers la première moitié des années 1940 que les autorités coloniales commencent à s'intéresser à l'élevage de manière générale. Leurs actions se limitent à la mise en place d'un cordon sanitaire dont l'objectif est de circonscrire la propagation des maladies. Pendant ce temps, le régime colonial multiplie les fermes agricoles en encourageant l'arrivée massive d'autres populations de la Gambie et de la Guinée portugaise. En effet, dès 1918, et malgré la politique de répression menée contre les marabouts, la colonie encourage l'installation d'agglomérations maraboutiques dont l'activité principale reste l'agriculture. La fondation du village de Madina El Hadj entre dans ce cadre.

Ce village est fondé par un marabout dont le père est originaire de la vallée du fleuve Sénégal et dont la mère est Peule du Gaabu (territoire portugais). Il migre dans la province « traditionnelle » du Kamako dont le chef-lieu est Bantankountou Mawnde²⁰. C'est sur accord des colons français et de la famille régnante qu'il défriche une partie de la forêt avec ses talibés et qu'il initie l'exploitation des jardins maraîchers (bananes, mangues). Ensuite, il met en place un vaste réseau de champs dans lesquels il exploite l'arachide. Cette partie de la région proche de la frontière bissau-guinéenne était faiblement peuplée, la forêt y était dense, infestée « d'esprits malsains » et il n'était pas permis, dans l'esprit des populations autochtones, aux non-initiés d'affronter ces redoutables créatures de la nature. Seuls les marabouts avec leur savoir mystique pouvaient les affronter et accroître ainsi leur influence sur leurs suivants. Les Peuls autochtones n'étant pas de grands agriculteurs, ils s'étaient établis à la seconde moitié du XIXe siècle sur les zones où le faro (bas-fonds) était très large, le plus important pour eux étant de trouver un espace leur permettant d'associer leur élevage à une agriculture peu extensive. La structuration de l'espace répond à ce souci de développer un grand troupeau

qui permet à son propriétaire de faire face aux aléas naturels. L'objectif principal des populations autochtones est d'avoir une grande réserve de forêt pour le pâturage. Aujourd'hui encore, lorsque l'espace devient insuffisant, ceux qui ont de gros troupeaux se déplacent pour aller fonder leur village dans des zones où ils peuvent facilement trouver du pâturage. Le relatif succès des exploitations du marabout²¹ et son accommodation au régime colonial forcent la colonie à mettre en place une ferme agricole expérimentale. Mais le faro au bout duquel est construit le village est peu large pour satisfaire la demande en parcelles rizicoles. Le marabout autorisa ses talibés à aller défricher une zone qui était longtemps restée inexploitée. Mais ce bas-fond appartenait aux populations autochtones. C'est pourquoi elles s'opposèrent à l'ensemencement des parcelles. Une bagarre éclata entre les nouveaux venus et les propriétaires au point que l'autorité coloniale s'en mêla et donna raison au marabout. Soutenus par une administration soucieuse de tirer profit d'une population stable, les marabouts avaient le loisir de provoquer des conflits, étant assurés de gagner les procès²². L'administration coloniale avait encouragé le développement rapide de ces villages au sud de la région actuelle de Kolda. Dans sa stratégie de conquête de l'espace et de quadrillage du paysage agro pastoral, le marabout installe sur les nouveaux terrains défrichés un frère ou un talibé dévoué. Cette technique est utilisée encore aujourd'hui par les populations wolofs venues du bassin arachidier et qui exploitent les terrains de culture dans les forêts classées du nord de la région.

Dans leur stratégie d'occupation de l'espace et leur volonté de limiter l'expansionnisme des villages maraboutiques, les populations autochtones créent, aux limites de leur terroir, de petits villages (Sinthiane) qui bloquent l'extension des champs de ces nouveaux venus. Cette course vers plus de terres va s'accélérer avec l'accroissement des familles et la surcharge de la concession familiale. Cette situation conduit à l'éclatement du galle (unité familiale) et à la dispersion de ses membres. Cela permet de décongestionner les villages et les terres de culture. Mais ces unités maraboutiques issues de la migration soutenue de Peuls originaires de la Guinée portugaise accentuent les conflits malgré les relations qui unissent ces populations aux autochtones. Une concurrence rude s'établit entre eux et provoquent des conflits incessants.

Aujourd'hui l'évolution sociale, économique et politique a conduit à l'apparition d'autres types de conflits qui plongent leurs racines dans les conflits fonciers antérieurs. La compétition pour le contrôle des postes de décision dans les instances locales s'en trouve exacerbée. Les enjeux politiques modernes ont accentué la faille entre les deux communautés, que ce soit au nord ou que ce soit au sud de la région. Il arrive très souvent qu'entre deux villages se pose un problème de renouvellement de la présidence d'une coopérative agricole. Les enjeux économiques, sociaux et politiques sont tellement importants que les tendances qui minent les partis politiques trouvent leurs moyens d'expression

dans les contradictions inter-communautaires. L'exemple du conflit qui oppose depuis près d'une vingtaine d'années les Toucouleurs et les Peuls dans le village maraboutique de Madina Gounass²³ illustre assez bien cette situation. En effet, cette zone jouxte le parc de Niokolo Koba, ici « la pression agraire » est très forte et les Peuls Bowebés en subissent les conséquences (Benoît 1988:379-388).

Depuis la réforme de 1972, la communauté rurale joue un rôle prépondérant dans la gestion et l'attribution des terres, mais sous le contrôle de l'administration. L'érection de Madina El hadj en chef-lieu de communauté rurale a été perçue comme une injustice par les populations « autochtones ». En effet, l'argument de l'antériorité historique de Bantankountou n'a pas été pris comme un critère déterminant dans le choix du chef-lieu de la communauté rurale²⁴. Donc l'Etat moderne, pour se subordonner les populations, n'a fait que reproduire les tactiques des colons.

Une région aux potentialités agro-sylvo-pastorales qui attirent une migration soutenue

Kolda fut érigée en région en 1984²⁵. La localité regorge d'énormes potentialités agro-sylvo-pastorales. En effet, ses forêts classées couvraient une superficie de plus de 365 000 ha. Elle constitue l'une des régions les plus arrosées du pays ; sa nature offre des étendues de terres moyennement exploitées. La faiblesse du peuplement au début de la colonisation tardive et le mode de territorialisation des populations locales ont laissé en friche des espaces qui attirent une population toujours croissante. La péjoration du climat et « la culture extensive [puis] le caractère « spéculatif » des techniques de production ont provoqué l'épuisement des sols » (Toure 1997:11)²⁶ et conduit les populations du bassin arachidier à amorcer une descente progressive vers la région. Ce flux démographique a pour conséquence la naissance de nouvelles agglomérations qui forment un front pionnier qui s'apparente à une chaîne de « colonies » de peuplement. Il en résulte un défrichement illégal des forêts classées, mais aussi des zones de pâturages et tout autour des mares d'abreuvement. Ces actions déséquilibrent le système écologique local et désarticulent le mode d'occupation et d'exploitation des terres déployé par les populations autochtones. Au pastoralisme s'oppose une agriculture arachidière qui peut être qualifiée de minière. Et aux problèmes de gestion quotidienne des terres viennent se greffer les volontés de contrôle d'espaces de pouvoirs concédés par l'Etat aux communautés rurales et aux différentes structures qui sont chargées de veiller à l'application stricte des réglementations.

C'est sur fond de reconstitution, en Haute Casamance, des confréries maraboutiques des régions du Sine-Saloum et de la naissance d'une force politique régionale que s'inscrivent ces compétitions sociopolitiques. Et pourtant nous assistons à ce que beaucoup pensent être un relâchement progressif²⁷ de l'emprise du marabout sur son talibé dans les régions centrales du Sénégal. Bénéficiant

de « complicités » aussi bien auprès des confréries maraboutiques (niassène de Kaolack et mouride de Touba) qu'auprès des autorités locales, ces paysans wolof entrent en conflit avec les Peuls qui se sentent « envahis » par les « nordistes », étrangers²⁸ (!), mais aussi marginalisés dans l'exercice effectif du pouvoir.

La fréquence des conflits pose un réel problème aux autorités administratives. La redéfinition des rapports sociaux entre autochtones et nordistes tire toute sa légitimité dans les tentatives d'appropriation (d'accaparement) des « modalités locales de participation » à la vie politique, régionale et nationale. Dès lors, les compétitions empruntent les chemins sinueux de l'ethnicité²⁹ et puisent, dans son économie « subjective », leur motricité et leur violence. Elles font apparaître aussi un problème crucial, celui de la différence qui s'établit entre allogènes et autochtones. Ainsi se pose la question de savoir dans quelle mesure la géopolitique régionale peut être sollicitée afin de servir de grille de lecture de ces conflits de pratiques. En effet, la région se trouve « encaissée » entre trois Etats : la Gambie, la Guinée-Bissau et la Guinée. L'interpénétration des populations et leur parenté conduisent souvent à des formes de solidarités qui nient et annulent momentanément les identités nationales, leur préférant la solidarité ethnique et les liens familiaux. En effet, dans ces conflits il n'est pas rare de voir intervenir des populations ayant la nationalité gambienne, bissau-guinéenne ou guinéenne. Nous assistons à une solidarité qui dépasse largement les frontières nationales dans la mesure où les populations des pays cités exercent, très souvent, des droits fonciers et établissent des relations familiales au-delà de ces lignes héritées de la colonisation.

Situées au nord de la région de Kolda, les communautés rurales de Madina Yéro Foula et de Pata accueillent depuis plus d'une quinzaine d'années des populations wolofs originaires du bassin arachidier³⁰, mais aussi des Toucouleurs originaires de la vallée du fleuve Sénégal³¹. Un rapport daté des années 1960 notait la faiblesse du peuplement et constatait en même temps qu'il était rare de retrouver des villages éloignés des « terrains alluviaux à vocation rizicole » ; force est de constater aujourd'hui que les villages s'échelonnent sur les plateaux. Toutes les communautés rurales situées dans ces zones accueillent depuis une trentaine d'années un apport démographique qui gonfle considérablement le taux de croissance annuel de la population³² (Fanchette 1999:76). Les forêts classées sont donc envahies non seulement par ces populations, mais aussi par d'autres venant du sud de la région. Le gros de cette population est constitué de grands éleveurs dont les troupeaux n'ont cessé de gonfler au point que leurs animaux ont besoin d'espaces plus larges et de pâturages plus importants. En plus de l'occupation illégale des forêts, ces « nouveaux migrants » s'installent sur d'anciennes jachères, entraînant des conflits inextricables³³. Ces nouvelles fondations de villages dans les forêts classées sont en contradiction avec les principes qui sous-tendent la création des communautés rurales. Car aucun village ne peut, normalement, être créé sans

l'assentiment du conseil rural. Mais il n'est pas rare de constater que beaucoup de ces villages ont été fondés à l'insu des présidents de communautés rurales³⁴ environnantes, et qui ont, en principe, en charge la gestion de ces forêts.

Leur mode de territorialisation contraste avec celui des populations dites autochtones. Elles élisent domicile dans les forêts classées ou dans les périphéries immédiates. Cette occupation illégale est en contradiction flagrante avec les enseignements du code forestier. La loi n° 72-25 du 19 avril 1972 déclare la communauté rurale « incompétente » quant à la gestion et à l'exploitation des forêts, alors que celles-ci se trouvent dans les zones de terroirs qui sont sous la gestion directe de ces mêmes communautés. Cette contradiction profonde va être réglée par la réforme du code forestier intervenue en 1993 (Loi n° 93-06 du 4 février 1993). La loi stipule que, et selon le commentaire qu'en fait Ibrahima Diallo, « dans le cadre du déclassement, le bénéficiaire ne peut être que la collectivité concernée » (1999:94). Même si la loi redonne aux collectivités « un pouvoir de décision prépondérant sur les actes dont la mise en œuvre risque de restreindre leurs propres droits sur un terrain qui leur appartient » (Diallo 1999:94). Il n'en reste pas moins que la plupart des villages wolofs ont été fondés avant les modifications apportées par la loi de 1993. Toujours est-il que ces installations ont suscité et suscitent encore aujourd'hui des inquiétudes au sein des populations peules qui voient leur domaine de pâturage se réduire davantage. Les autochtones accusent les Wolofs de coloniser leurs terres avec la complicité des autorités centrales. Et les Wolofs revendiquent leurs droits d'user de la terre sans référer aux Peuls qui, dans leur esprit, laissent les terres vacantes.

Les conflits entre Peuls et Wolofs sont très fréquents dans cette partie de la région. En effet, l'extension des surfaces cultivables aux zones traditionnellement exploitées par les éleveurs suscite des frictions qui débouchent sur des affrontements meurtriers. Les troupeaux des Peuls qui s'aventurent dans les champs sont tués. Il n'est pas rare de retrouver des cadavres d'animaux dont les langues sont entravées par des fils de fer³⁵. Ces actes provoquent la colère des éleveurs qui, par représailles, détruisent les champs. Il en résulte des affrontements qui peuvent se solder par la mort d'homme. La délimitation des territoires devient problématique et complique davantage les relations mutuelles³⁶.

Accès à la terre et résurgence des pratiques « coutumières³⁷ » : conflits de pratiques

La littérature sur le foncier en Afrique est très abondante. Elle aborde tous les aspects sans pour autant toucher à l'historicité des conflits et sans évaluer de manière systématique les héritages qui en déclinent les courbes. Dans l'éditorial du dernier livre publié par le Laboratoire d'anthropologie juridique de Paris et intitulé *Retour au Foncier*, Etienne Le Roy évoque le « retour du foncier » en Afrique en ces termes : « le retour en ce début du XXI^e siècle de nouvelles

problématiques dans le domaine des politiques publiques (...) remettent la question foncière au centre des débats politiques et des démarches réformatrices » (2001:8). Cette citation permet de voir que ceux qui ont été, dans les années 1980 et bien avant, au devant de la scène pour réaliser les études sur foncier en Afrique, sous l'impulsion, soit du FMI, soit de la Banque Mondiale, soit des Instituts européens de recherche, ont tenté de revoir leurs acceptions en fonction des réalités africaines « modernes ». Est-ce un retour ou une réalité prégnante qui n'a jamais cessé d'être là ? Les études occidentales qui traitent du foncier en Afrique ont oublié une dimension importante de la réalité africaine et se sont laissées guider par les règles édictées par les différentes institutions internationales et des Etats à tel point qu'elles se sont intéressées à des études descriptives dont la validité n'a pas pu rendre compte du vrai sens des organisations internes des sociétés africaines. Elles se sont, le plus souvent, focalisées sur « le jeu normatif et spécialement sur la place des concepts de propriété ». L'inspiration profonde des études suit les exigences des politiques d'ajustement structurel et de libéralisation de l'économie de marché. La rencontre entre la « légitimité » et la « légalité » n'a pas été prise en compte afin de nous renseigner sur les réalités divergentes des acteurs en place. L'Etat peut-il, par sa seule législation, défaire l'autochtonie³⁸ et imposer partout la citoyenneté pleine et entière en matière d'accès à la propriété, d'exploitation des ressources naturelles et d'aménagement du domaine national ? L'autochtonie peut-elle se dissoudre dans les principes de la citoyenneté ? Cette question mérite d'être posée dans la mesure où la résurgence de cette revendication rend difficile l'application stricte des lois édictées par la République. Et la plupart des études émanant des spécialistes africains relèvent très souvent de la « littérature grise » qui dort dans les tiroirs des ministères de tutelle. Dans ces études, on peut déplorer l'inexistence d'une articulation claire et convaincante entre les revendications pour la démocratisation et l'accès réglementé à la propriété dans un monde rural et urbain où les mutations ne cessent de s'accélérer³⁹ et surtout de prendre des trajectoires insoupçonnées.

L'appropriation de la terre et sa gestion ne peuvent pas, seulement, répondre aux situations du moment que nous vivons, mais dans la relecture des subjectivités décrétées comme défaites par le statut que confère l'entrée dans la « modernité ». Sa mise en valeur et sa redistribution s'inspirent de pratiques séculaires considérées comme imaginaires, socio-mystiques ou calquées sur d'autres critères relevant des cosmogonies locales. En un mot, elles répondent aux exigences des cultures considérées comme rétrogrades et estampillées de ce sceau réducteur de leur intelligibilité. Chaque communauté met en place ses règles, ses modèles, ses structures de distribution et d'exploitation de son espace en fonction de ses activités les plus prégnantes. En ne tenant pas compte de ces réalités, le législateur dévalue les normes qui permettent d'apprécier les relations du sujet avec son environnement, et surtout de légiférer en confondant ce qu'on pourrait appeler héritage africain et subjectivité moderne. Les décideurs politiques doivent être

au fait des choses, avoir une connaissance assez large des sociétés et maîtriser quelques données essentielles de leurs modalités organisationnelles. En un mot, ils doivent maîtriser l'histoire des communautés afin de mettre en place une politique adéquate qui ne soit pas en contradiction avec les réalités dites locales. Ainsi, le planificateur doit rendre « ses schémas d'intervention compatibles avec le cours quasi irrésistible des choses » qu'il souhaite changer (Couty 1981:263). Le Sénégal, comme tant d'autres pays colonisés, hérite de la « coutume », des lois de l'islam⁴⁰ et de celles du colonisateur. Tout ceci dérouta les consciences au point de mettre en mal le législateur, héritier de la *modernité* coloniale qui tranche avec celle des indigènes. Elle exige une unité des vues inspirée de l'idée, presque perverse, d'un monde à harmoniser⁴¹, tout en déclassant toutes les autres spécificités dont l'historicité marque, partout, et de manière indélébile, les comportements et les agissements qui en découlent. En effet, nous assistons à la remise en cause « de la conception moniste, dite étatique, du droit » (Hesseling 2005:9). Les réalités locales ne se sont jamais soumises, mais ont trouvé dans l'esquive le moyen le plus efficace pour échapper et surtout négocier leur survie face à ce type d'organisation qui tente de la déclasser.

L'Etat africain moderne du Sénégal a tenté de mettre en place des textes pour gérer de manière concrète le foncier et les problèmes qu'il soulève, sans lever l'équivoque qui entoure leurs ambiguïtés. Même si l'Etat est présent dans les coins les plus reculés du pays, l'application des législations foncières bute sur des problèmes. L'Etat négocie en fonction non seulement de ses intérêts propres, mais aussi en fonction du rapport de force. Il est fréquent que les administrateurs chargés d'appliquer la loi agissent contrairement aux intérêts des populations au point de prendre part pour des exploitants qualifiés de plus à même de rentabiliser les terres.⁴²

Les sociétés africaines ont des modalités, des mécanismes et des soucis de préservation de leurs environnements écologique, social ; et de tout ce qui peut participer à la perpétuation de leur être et qui peut façonner son devenir dans le monde. Ce rôle suprême a été au soubassement de la « différenciation interne » dont parle Mahmood Mamdani (2004:61). Cette différenciation interne opérée par les colonisateurs et leurs successeurs s'inspire de l'idée figée qu'ils avaient de l'ethnie, de la tribu ou de la communauté, toutes ces structures qui braconnent aux marges de la modernité. L'Etat africain moderne peut-il garantir les droits de ses différents citoyens confondus dans sa législation et/ou est-il un observateur « incapable » d'appliquer ses propres réformes au point de brouiller les régimes de droit dont il hérite les fonctionnements et les modes de réglementation ? C'est là une question fondamentale, dans la mesure où on a pensé et on continue de penser que la diversité ethnique régit plusieurs fonctions et institue une multiplicité de lois, sans en prouver les légitimités respectives et les limites dans la volonté affichée des pouvoirs publics à ériger une nation unie et moderne.

Priorités et/ou contraintes

La complexité qui investit les modalités d'accès à la terre tire toute son essence dans la « pluralité des systèmes juridiques ». Les entités étatiques d'aujourd'hui résultent de multiples errements dont le soubassement n'est pas seulement territorial⁴³, mais alimenté par une volonté de contrôle des hommes et de leurs différents moyens de production. Avant la naissance de ces Etats, les systèmes coloniaux avaient nié l'existence d'un autre cadre d'expression, d'un autre système d'accès à la terre et à la propriété foncière en voulant lui substituer un autre. L'Etat décrété moderne hérite de ces « réalités » sans en définir les légitimités divergentes et surtout toutes les contradictions qui vont apparaître par la suite. S'inspirant, par effraction, de son « héritage », il met en place des règles et des réformes foncières d'origine étrangère (coercitives) et expose les populations (autochtones et allogènes) aux *dé-régulations* qu'imposent l'emprunt et le mimétisme. Au temps colonial, ce qui intéressait le plus, c'était le contrôle des hommes afin de leur faire subir la rigueur de l'impôt et des recensements qui instituent les règles des sévices subis. La valeur humaine et économique des populations ayant d'autres modes était déclassée. C'est pourquoi les pasteurs furent étiquetés « populations flottantes », car ayant d'autres modes de gestion qui étaient pourtant complémentaires avec celles des populations dites sédentaires,⁴⁴ facilement imposables, et sur lesquelles les colons pouvaient compter pour la mise en valeur des territoires conquis. La *fluidité ethnique* permettait l'intégration des allogènes et la construction de nouvelles solidarités au-delà des différences, même si cette réalité n'excluait pas les conflits.

Les modes de cohabitation entre paysans et éleveurs leur permettaient, respectivement, d'user de la terre et d'édicter ensemble les modalités de son exploitation et de sa gestion. Mais la politique coloniale, dans sa volonté de rentabiliser les terres africaines, a mis l'accent sur les agriculteurs (paysans) qu'ils pouvaient contrôler de manière plus ou moins *souple*, alors que les « populations mouvantes » (nomades) suivaient un rythme négocié des siècles auparavant. La différenciation entre paysans et nomades ne devait pas être déterminante dans l'érection d'une économie nationale dont l'objectif aurait dû être la valorisation des activités de toutes ses composantes.⁴⁵ Le colonialisme, dans sa volonté de légiférer, a réussi à créer deux mondes antagoniques et aux méthodes de gestions devenues contradictoires, comme par hasard. L'agriculture « minière » (l'arachide, le coton) est venue valider cette pratique et cette volonté de pérenniser, dans les esprits, une dichotomie inconciliable qui n'a jamais existé dans les faits. Cette nouvelle méthode de gestion du patrimoine foncier et des hommes perturbe de manière incontestable l'interdépendance entre gestionnaires de terres et exploitants de ces dernières. Et de là à soutenir que les conflits prennent leur source, il ne reste qu'un seul pas à franchir. Le colonialisme, inspiré de sa méthode de gestion, s'est embourbé en confondant gestion et « jouissance ». D'où les tentatives

d'immatriculation des terres pour les donner à « ceux qui les travaillent ». La ruée des grands commerçants, des fonctionnaires de l'Etat et des étrangers⁴⁶ vers les terres de la vallée du fleuve Sénégal, côté mauritanien, s'inspire largement de ce principe au point de conduire à des conflits avec les autochtones qui sont obligés de se plier à la force de l'Etat.

Le contrôle de la terre est au centre des réformes foncières dans tous les pays africains⁴⁷. Les exemples du Zimbabwe, de l'Afrique du Sud⁴⁸ et de la Namibie illustrent cette soif de mettre en place des lois équitables pour tous. Peuples perturbés par l'intrusion inattendue d'autres types de mécanismes économiques qui puisent leur seule « légitimité » dans l'économie marchande et la rentabilité de cette dernière. Ces exemples démontrent comment la discrimination dans l'usage et dans l'appropriation de l'espace dans des pays où la ségrégation avait créé des zones « d'accessibilité » et des zones « interdites » peut entraîner des conflits interminables et complexes.

Le modèle sénégalais permet de déceler les multiples contradictions qui se nouent autour de la validité « contestables » des réformes actuelles et la nécessité de les revoir.

L'action de l'Etat moderne⁴⁹ : réformes institutionnelles et juridiques

Partout où il est venu codifier les régimes qui le précédaient, le pouvoir colonial a perturbé profondément le fonctionnement des sociétés en créant non seulement de nouveaux droits, mais aussi en exacerbant les conflits entre les différentes communautés. Les tentatives de modifier le système de tenure des terres n'échappent pas à cette règle devenue le pilier central de la politique de stabilisation et de négociation non seulement des alliances, mais aussi des allégeances. En effet, le décret du 24 juillet 1906, dont l'objectif est d'organiser le régime de propriété en AOF en reconnaissant les « droits coutumiers », voulait permettre aux populations d'accéder à la propriété privée, du moins selon l'une de ses multiples interprétations.

Mais ce principe d'individualisation des terres n'a pas été suivi d'effet, dans la mesure où il était en contradiction flagrante avec le système de tenure des terres qu'il a trouvé sur place et qu'il souhaitait modifier. Dans le principe du droit français, les collectivités n'ont pas de personnalité juridique. Plus tard, le décret du 8 octobre 1925 confirme l'existence des droits coutumiers, mais il institue en même temps « le régime de transcription ». Le pouvoir colonial met en place des registres fonciers qui permettent aux populations de venir inscrire leur bien foncier au devant de l'administration. Cette procédure de transcription permettait aux populations d'enregistrer leurs propriétés et de se voir attribuer un certificat par les autorités coloniales. Mais le décret du 26 juillet 1932 réorganise le régime de propriété en AOF. Il confirme les droits d'inscription. Son objectif principal était, semble-t-il, de limiter les contestations. Mais dans plusieurs territoires sous domination coloniale française, on constate que ce régime d'inscription

entraîne « la confrontation entre une légitimité coutumière et celle tirée du droit administratif »⁵⁰. Ainsi donc, l'administration coloniale « a repris les principes généraux du droit français spécifique, en adaptant ses contenus et modalités aux conditions particulières du milieu colonial »⁵¹ sans grands résultats sinon la déstructuration des mécanismes locaux conduisant à des repositionnements sociaux et à des revendications plus exacerbées.⁵²

Quatre années après l'accession à l'indépendance, l'Etat engage une réforme foncière (Loi 64-46 du 17 juin 1964 et son décret d'application 64-573 du 30 juillet 1964) qui institue le domaine national. Elle vient modifier le régime coutumier⁵³ de gestion et d'exploitation des terres. La loi foncière de 1964 est donc venue pour uniformiser les pratiques. Elle classe les terres en trois catégories : les zones urbaines, les zones classées et les zones dites de terroir. Ces dernières zones relèvent de la compétence du conseil rural (collectivité décentralisée) créé par la loi 72-02 du 1er février 1972. Héritant des principes d'une économie basée essentiellement sur l'agriculture arachidière et des différentes réformes édictées par le colonisateur, l'Etat sénégalais néglige et marginalise le pastoralisme. Il reproduit quelques aspects de la politique pastorale coloniale en multipliant les forages et en confinant les pasteurs dans les zones bien déterminées. Ces réformes ont certes apporté des changements dans l'orientation générale, mais leur application se heurte aux réalités des communautés.

Décentralisation et transfert de pouvoir : des limites réelles

Pour répondre à ces questions, il me semble indispensable d'analyser quelques aspects des contradictions apparues à la naissance des communautés rurales et l'érection des conseils régionaux, alimentées par les querelles des acteurs politiques locaux⁵⁴.

Comme souligné un peu plus haut, la décentralisation et le transfert du pouvoir politique, social et économique au Sénégal datent des années 1972 avec la naissance des communautés rurales. Même si, comme le souligne un organisme, spécialisé⁵⁵ dans la traduction en langues nationales des différentes lois, que la politique de décentralisation « doit être perçue non comme une réforme technocratique, mais comme une refonte démocratique en vue d'atténuer la polarisation par l'Etat de toute la vie politique nationale ». Admettons qu'elle connaît actuellement d'énormes difficultés de fonctionnement. Il est symptomatique de constater que cette dévolution de pouvoirs n'a pas engendré les changements escomptés : l'approfondissement de la démocratie locale avec la naissance d'un pouvoir politique régional indépendant⁵⁶, l'impulsion d'une dynamique de développement endogène durable et conséquente, pouvant garantir la stabilité. L'indépendance tant chantée entre l'administration de l'Etat et l'administration locale n'a jamais été effective, car les prérogatives des uns et des autres s'en sont trouvées enchevêtrées au point que les compétences de ceux chargés d'en faciliter le bon fonctionnement entrent régulièrement en conflits. La « démarcation entre l'administration d'Etat et l'administration locale » n'a pas vu le

jour. Loin s'en faut. Cette politique n'a pas mis « fin au « verticalisme » » et n'a pas pu « doter les collectivités locales d'une réelle capacité d'action et consacrer leur aptitude à conduire des politiques propres », comme le souligne la page de présentation de la politique de décentralisation de l'Observatoire de la gouvernance locale.

L'ancien parti au pouvoir, en l'occurrence le Parti socialiste, et l'Etat dans leur volonté de se subordonner tous les pouvoirs émergents aux périphéries de l'Etat ont aliéné son mode de fonctionnement et se sont approprié sa technique de mobilisation afin de satisfaire les ambitions des hommes politiques locaux qui aspirent à plus de visibilité sur le plan national. Cette pratique tire sa prétendue légitimité de la tentative de reproduction pure et simple du clientélisme. Elle a conduit au dysfonctionnement interne du pouvoir local et limité de manière incontestable sa capacité d'être une véritable courroie de transmission entre le pouvoir central et les populations. Les enjeux que suscitent le contrôle de ce pouvoir et les clivages intra et inter ethniques [les conflits opposants les Peuls autochtones aux Peuls originaires de la Guinée-Bissau, aux Toucouleurs et aux Wolofs] ont eu raison des modes de gestion pacifique du commerce quotidien entre les citoyens. La concurrence entre les représentants de l'Etat [les services administratifs], les élus locaux et les chefs coutumiers, la superposition de leurs prérogatives ont compliqué davantage les repères et entraîné l'opacité qui traverse toutes les décisions prises au niveau local : comme l'attribution des domaines fonciers et la gestion des conflits qui en découlent. Il est évident que le contrôle et la mise en valeur de l'espace et la neutralité douteuse des autorités, [sous-préfets⁵⁷, originaires du nord], ont exacerbé les empoignades et les scissions au sein des villages, entre villages⁵⁸, voire entre eux et quelques grandes agglomérations. Les terroirs se chevauchent à tel point qu'il est presque impossible de comprendre qui commande qui et qui décide de quoi. Les ressources de la violence sont sollicitées au détriment de l'application de la loi dans un pays réputé pour sa démocratie et son multipartisme effectif.

Si le Sénégal est présenté comme le pays africain où la démocratie politique est la plus sophistiquée, disons qu'à sa périphérie se déroulent des conflits qui rendent compte de son inachèvement et des limites du rôle de l'Etat dans la diffusion des vertus citoyennes. Les anciennes pratiques dites coutumières resurgissent et luttent contre les lois modernes jugées en déphasage avec les réalités du pays profond. Tout cela relève d'un découragement devant des politiciens qui ne pensent en définitive qu'à leurs luttes quotidiennes pour construire leur réseau clientéliste et accéder aux rentes de l'Etat.

Au lendemain de l'alternance politique au sommet de l'Etat en mars 2000, les avis étaient unanimes pour soutenir la panne de la régionalisation initiée par le Parti socialiste. Cet échec tire une partie de sa substance de la confusion des prérogatives assignées aux différents démembrements de l'Etat chargés de diffuser et partout une autre manière de concevoir la participation citoyenne. Quelques

mois après son accession au pouvoir, le président Wade avait suggéré de rebaptiser les régions et de leur redonner leur dénomination d'origine. Cette tentative de revenir sur les anciennes dénominations a provoqué des débats extrêmement houleux au point que le président est revenu sur sa décision.⁵⁹

Le « légitime » contre le « légal » ?

Les modalités d'accès à l'espace foncier en Afrique pré-coloniale ne peuvent pas être considérées comme artificielles ou rétrogrades. Elles s'inspirent de la culture de la société qui en maîtrise la propriété et/ou qui en édicte les lois d'exploitation et de gestion. Ce serait peut-être un truisme que d'affirmer que l'homme organise son espace en fonction de l'usage qu'il en fait et des objectifs qu'il s'assigne pour bénéficier de la quiétude sociopolitique et économique et organiser ses relations avec les autres. Mais l'évidence ainsi relevée ne constitue point, cependant, une leçon indépassable, elle est plutôt susceptible d'être aménagée et réaménagée en fonction de l'évolution historique, des exigences du moment et des manipulations juridiques qui peuvent en découler. Le colonisateur a confondu, dans bien des cas, le gestionnaire des terres et leur propriétaire. Erreur fondamentale dont s'inspirent aujourd'hui, encore, l'Etat postcolonial et son législateur. Le colonialisme a oublié dans son bagage législatif le droit de non aliénation de la terre. L'essentiel, pour lui, était de répondre aux exigences du marché. La conception coloniale du droit ne pouvait que fonctionner par la force. Evidence vérifiée partout où elle est passée avec son discours civilisateur dont les limites s'arrêtent au côté de la résistance « physiologique »⁶⁰ de ceux qui sont appelés à l'appliquer. La gestion des terres, du droit des indigènes et de la vie tout court ne répond pas à la résistance physique, mais à la « force de la tradition », pour reprendre l'une des idées développées par Mahmood Mamdani. D'où l'importance de son concept de « despotisme décentralisé ». Ce despotisme décentralisé n'est pas seulement valable pour le régime colonial et ses différents démembrements, mais bien pour son héritier, l'Etat post-colonial décrété moderne. Celui-là même qui légifère encore aujourd'hui sans prendre en compte les spécificités locales, à cause des compétitions politiques et des mécanismes d'allégeance qu'il tente de se subordonner.

L'analyse de la gestion du foncier permet de saisir, dans toutes leurs dimensions, les règles qui fondent la démocratie et la reconnaissance des droits des citoyens d'user de la terre là où ils se trouvent, et sur n'importe quelle portion de l'espace national. Mais l'appartenance à la communauté nationale, le partage des vertus républicaines ne garantissent pas, pour tous, l'accès et l'exploitation des terres de façon équitable, comme si l'intégration nationale et les lois qui en instituent les modalités entrent en conflit avec les réalités dites locales ou coutumières. Dès lors, nous pouvons nous interroger sur le poids réel des législations édictées après les indépendances et leurs incidences sur les droits et les devoirs des citoyens.⁶¹

La résurgence de la question foncière, de la maîtrise et du contrôle du domaine foncier après quarante ans d'indépendance, et ce, malgré la mise en place de réformes juridiques et politiques, doit nous pousser à nous poser des questions sur l'historicité des rapports multiples entre l'homme et son environnement, mais aussi les rapports entre le législateur et les questions de société qu'il tente de réglementer afin d'harmoniser sa façon de les gouverner. La connaissance des pratiques qualifiées de coutumières est indispensable pour la mise en place d'une législation plus adéquate et facilement acceptable pour tous les citoyens où qu'ils se trouvent. Ils ont longtemps résisté à un type d'Etat dont les modèles de gestion du patrimoine et d'encadrement des populations privilégiaient les idées productivistes. L'Etat indépendant et champion du « rationalisme » est perçu comme un héritier direct de cette pratique au point qu'il se voit assimilé à l'Etat colonial. Cette situation informe aussi sur l'échec de cet Etat-nation qui continue encore aujourd'hui à vouloir homogénéiser les pratiques des différentes communautés qui le composent.

Les lois sur le domaine national et la gestion des ressources naturelles, par leur volonté d'harmoniser les pratiques, sont en « flagrant délit » avec les règles « traditionnelles » de gestion du patrimoine foncier. L'application de ces lois pose un réel problème d'appréhension entre ce qu'on pourrait appeler ici droit « légitime » et droit « légal ». Légal doit être interprété comme des lois inspirées de la modernité européenne et légitime appréhendé dans l'acception indigène du droit, celle-là même qui, par son historicité incontestable, a longtemps régi les rapports entre les communautés africaines. Des contradictions [la volonté des Etats indépendants de bâtir des nations solides] profondes existent entre la *coutume* étatique et les *lois coutumières* ; et tout ceci conduit aux conflits entre celui qui se réclame comme national et celui qui revendique un droit à la reconnaissance de son autochtonie. Le légitime et le légal s'affrontent à travers les différents mécanismes qui instituent leurs légalités devenues contradictoires.⁶² Les conflits de pratiques – et non ethniques – au Nigeria en déterminent, quelque peu, la profondeur du sens. Nous assistons ainsi depuis l'application de la réforme foncière à une forme de « rupture de légitimité » des communautés ethniques qui ont longtemps exercé leur emprise sur les terres qui ont vu se succéder les organisations qui géraient leur quotidien.

Il n'est plus possible pour ces populations pastorales de quitter leur territoire, car les frontières étatiques sont presque venues délégitimer leurs mouvements séculaires. Elles s'attachent à ce territoire qu'elles contrôlent depuis des siècles, car hérité de leurs ancêtres. C'est le territoire de leurs ancêtres. Il est le lieu sur lequel s'est construite leur identité et qui, finalement, fonde leur enracinement territorial et leur raison d'être (Bonnemaison 1985:151-170). Toute leur identité est bâtie autour de cette terre des « ancêtres » qui devient non seulement nourricière, mais aussi des « lieux de mémoire ». Ce cadre territorial constitue un support solide pour

se construire une identité de groupe (Goedefroit 1998 : 179) homogène devant ceux qui sont considérés comme des « envahisseurs ». Une opposition nette se dessine entre autochtones et allogènes, les premiers puisent sur la légitimité du primo-arrivant et les seconds dans leur appartenance à une République démocratique qui, normalement, garantit leurs droits de citoyens. Tous les conflits prennent leurs racines dans cette dichotomie « pour justifier des formes d'exclusion d'une brutalité croissante » (Bayart et *al* 2001:178) et qui pose un réel problème de citoyenneté. Les modes d'organisation sociale, les stratégies d'occupation de l'espace et l'ethnicité sont convoqués pour justifier les comportements et les réactions qui en découlent. Ces « économies morales » constituent de véritables stocks de schèmes qui définissent les contours des pratiques des citoyens et qui expliquent leur repli identitaire⁶³. Ainsi, les revendications des autochtones tentent d'exclure ou de concurrencer leurs concitoyens, venus des portions du territoire national, au nom de la coutume locale et non en s'inspirant des lois de la République. La fluidité ethnique d'antan perd de sa valeur, dès lors un mur d'incompréhension s'érige et devient le champ fertile des confrontations à caractère raciste⁶⁴ ou ethnociste.

Le constat est fait que la gestion des terres par l'entremise de l'Etat n'a fait qu'exacerber les conflits. L'évaluation de l'impact de la loi foncière sénégalaise (46-64) démontre toutes les réticences des « aristocraties » du monde rural à s'adapter à ses exigences inspirées de l'héritage colonial⁶⁵. Cette dichotomie pose, à elle seule, les difficultés que rencontrent l'administration territoriale et ses différents démembrements à appliquer la loi sans se référer à la primauté des autochtones et aux exigences (légitimes) des allogènes à la recherche de nouvelles terres de culture. Se pose dès lors, dans des termes peu conciliables, un problème de droits. Les autochtones bénéficient, à notre sens, d'une double identité. Ils sont non seulement citoyens de la République, mais aussi originaires du *terroir* – dépositaires de droits pensés « inaliénables » sur « leurs terres », un droit légitime séculaire, traditionnel, coutumier ! Ils l'actionnent selon les stratégies du moment et surtout par rapport à leurs volontés de limiter considérablement la progression des migrants venus des autres régions du pays. Malgré la loi de 1972 instituant les communautés rurales et la dévolution de quelques pouvoirs, ce manque de clarté entre les compétences des uns et des autres n'a fait qu'exacerber les conflits fonciers inter et intra-ethniques. Ces conflits révèlent, dans toutes leurs dimensions, des contradictions de pratiques fondatrices des limites des héritages, et conduisent à leur reconsidération en fonction des objectifs que se fixent les pouvoirs publics pour préserver la paix sociale. Les lois doivent-elles être réajustées en fonction des modalités locales, sans que l'Etat ne fléchisse un seul moment face aux exigences que demande la construction d'une nation⁶⁶ ? A quel moment ces différents héritages et pratiques entrent-ils en contradiction avec les réalités autochtones ? A quel moment l'autochtone tend-t-il à user de sa double casquette pour s'ériger en concurrent face aux autres nationaux ? Comment un citoyen peut-il devenir subitement « étranger » dans son propre pays⁶⁷ ?

L'exemple de la région de Kolda permet de comprendre les modalités d'analyse des contradictions et de réfléchir sur les principes qui président à la mise en place d'une législation foncière et domaniale qui garantit l'harmonie des communautés fondatrices de la légitimité de l'Etat. Cela permet de saisir si « les superpositions [et] aussi les affrontements de légitimités traditionnelles et « modernes » (...) impriment » (Braud 2004:146) à un pays qui cherche à sophistiquer sa démocratie et à donner sens à la citoyenneté « une dynamique propre » qui conduit à « son affaiblissement » et surtout le blocage du fonctionnement effectif de la décentralisation. Il nous semble que cette approche qui s'inspire de la vie de la périphérie est le lieu qui permet de penser si la loi est capable de répondre aux exigences nationale, car l'Etat doit garantir l'épanouissement et les aspirations de l'ensemble de ses composantes. Sans cela, les conflits de méthodes seront toujours exacerbés et annihileront les efforts d'une législation qui tente de donner sens au principe d'équité sociale, sans possibilité d'opposer allogènes et autochtones.

Kolda résume, à notre avis, dans le Sénégal, le lieu qui attire les « migrants » nationaux à la recherche de « nouvelles » terres à exploiter et le champ d'expérimentation – sans exagération – des lois de la décentralisation. Les conflits dans cette région permettent de nuancer la volonté affichée par l'Etat de démontrer que la justice sociale et la démocratie sont partout porteuses de sens. La politique économique de l'Etat se base sur l'exploitation de l'arachide et du coton, denrées introduites par les colons pour leurs besoins propres, pour « imposer » partout leurs principes de réforme foncière et de « mise en valeur » après l'abolition de la traite négrière, alors qu'ils sont en contradiction avec les pratiques locales. La région de Kolda, dont le potentiel sylvo-agro-pastoral est énorme, souffre de la marginalisation de l'élevage⁶⁸ dans les politiques qui tentent de réformer les pratiques indigènes sans pour autant compter sur elles et sur les activités qu'elles maîtrisent le mieux. D'où l'opposition injustifiée entre deux mondes complémentaires. L'élevage et les pasteurs ont été les parents pauvres de la politique coloniale de mise en valeur, mais aussi de l'Etat sénégalais.

La loi de 1972, qui instaure les communautés rurales, n'a pas pu trancher les questions complexes d'attribution et de gestion des terres. Loin s'en faut ! Et celle qui institue la décentralisation effective, promulguée en 1996, n'en garantit pas la clarté. Les remèdes n'ont pas été en mesure de « réformer » et d'harmoniser le système de tenure des terres. Les priorités de développement n'ont pas pris en charge la nécessité d'évaluer l'impact réel des lois modernes sur les sociétés, leur environnement, leurs priorités et surtout leurs modalités d'appropriation et d'organisation de leurs terroirs. Il a fait naître de nouveaux clivages entre citoyens d'un même pays. Les conflits qui surgissent aujourd'hui en Haute Casamance démontrent, si besoin en est, comment les législations foncières en Afrique et au Sénégal, ne garantissent ni l'accès à la terre et à la propriété, ni l'accès à la citoyenneté entière. Le droit officiel bute sur les résistances du « droit coutumier » et pose

le problème combien crucial de sa légitimité. Les pratiques des administrateurs viennent aussi renforcer ces clivages au point qu'il est très fréquent dans cette région d'assister à des conflits meurtriers qui sont, très souvent, minimisés par le pouvoir public. Cette situation déteint de manière traumatique sur les relations quotidiennes de populations appelées à s'intégrer au sein d'un territoire déclaré national et où la notion de citoyen prime sur toutes les autres considérations.

Notes

1. Cf. notre thèse « Le royaume peul du Fuladu de 1867 à 1936. L'esclave, le colon et le marabout », UCAD, Dakar, 1998, 280 p. Dans tous les récits que nous avons pu recueillir, une anecdote persistante revient. En effet, selon la tradition orale, lorsque le « parti » des esclaves (*jiyaabe*) décida de se soulever, les nobles (*rimbe*) étaient contre cette « aventure », arguant que seuls eux souffriraient d'une défaite probable, car ils perdront leurs troupeaux, alors que les esclaves n'avaient qu'un bien meuble : la terre. C'est pourquoi beaucoup d'entre eux se replièrent vers d'autres zones plus sécurisées comme le Pakao en milieu mandingue. Mais après la victoire, ils revinrent pour se voir octroyer des zones de pâturage, laissant le pouvoir politique aux mains des anciens esclaves. On entend toujours dire : « *Fuladu ko leydi jiyaabe* », qui signifie « le Fuladu est le pays des esclaves ». La sentence est entendue, les Peuls *jiyaabe* s'approprient cette partie du royaume gaabunke, y exercent le pouvoir et en contrôlent ses terres.
2. Lire à ce sujet N'gaïde 1999.
3. Lire à ce sujet N'gaïde 1997.
4. Lire à ce sujet notre texte « Du Bilad el-Makhzen au Bilad el-Siba. Continuité historique ou revitalisation ? », in Laurence Marfaing & Steffen Wippel, *Les relations transsahariennes à l'époque contemporaine. Un espace en constante mutation*, Paris, Karthala/ZMO, pp. 321-336. Nous traitons dans l'une des parties de ce texte de la notion de frontière et insistons sur sa fluidité.
5. Dans texte à paraître « Identités ethniques et territorialisation en Casamance », in Ben Arrous, *Etudes africaines de géographie par le bas*, Codesria, nous revenons sur les répercussions sur le plan politique, social et territorial de la morphogenèse du royaume du Fuladu.
6. Cette partie reprend largement les données tirées de l'article d'Etienne Landais cité en bibliographie. Même si le texte ne traite pas de la région de Kolda, il traite de l'ensemble de la situation de l'élevage.
7. Lire à ce sujet l'ouvrage d'Aboubacry Moussa Lam cité en bibliographie.
8. Cette idée a été tellement développée, au point de fausser tous les regards et toutes les analyses des rapports entre les Peuls et leurs troupeaux. Et pour saisir la portée symbolique du *pulaagu*, lire avec intérêt l'article de Elisabeth Boesen cité en bibliographie.
9. Lire N'gaïde (2003) (cité en bibliographie) pour comprendre comment les stéréotypes peuvent s'ériger en normes au point d'être intériorisés et finir par réglementer les rapports sociaux entre les individus et leur groupe.
10. Pour saisir les relations agriculture-élevage et les problèmes que pose ce couple, lire avec intérêt l'article d'Etienne Landais & de Philippe Lhoste et celui d'Angelo Maliki Bonfiglioli cités en bibliographie.

11. A.N.S 13G17/22 Situation politique et administrative du Cercle de Kolda. Plaintes contre Abdoul Diallo. Exode vers la Gambie (1934-1942). Nous avons l'impression que l'Etat post-colonial agit de la même façon. Et cela pose la question lancinante de la continuité historique entre la politique déployée par l'Etat colonial et celle que tente d'appliquer son héritier.
12. Lire avec intérêt les commentaires et développements faits par Arjun Appadurai sur le rôle du nombre dans l'imaginaire colonial et les conséquences multiples du dénombrement, de la quantification et de la cartographie sur le futur des Etats « modernes ». Voir la seconde partie de son ouvrage et le chapitre V (pp.139-194) : « Le nombre dans l'imaginaire colonial » (pp. 169-194).
13. Mahmood Mamdani le constate pour les paysans mossis qui fuient la Haute-Volta « pour échapper à la culture obligatoire du coton » (p. 230). Il nous dit plus clairement : « Pour ceux qui vivaient à la frontière d'une autre puissance coloniale, il existait une alternative au fait de ne pas remplir son quota ou de recevoir "une leçon" : il suffisait de s'enfuir de l'autre côté de la frontière » (p. 230). Cette stratégie d'évitement a été largement utilisée par les populations de la région de Kolda soit pour aller en Gambie anglaise, soit en Guinée portugaise.
14. Une riche terminologie géographique permet de saisir comment les Peuls organisent leur territoire et lui assignent des fonctions déterminantes dans leur vie de tous les jours : *lapol* (piste pour troupeau) *lawool* («route»), *saré* (village), *sinthiane* (nouvelle création qui a pour fonction, dans le Fuladu, de limiter l'espace d'expansion d'une communauté donnée. Le *sinthiane* sert de «frontière» entre deux terroirs), *wuro* (espace réservé aux troupeaux), *nyangal* (pâturage), *weendu* (mare d'abreuvement pour les animaux), *ladde* (forêt). Ces différents repères organisent le territoire. Ils sont complémentaires.
15. Dans une communication présentée au Colloque de la French Colonial Historical Society (Dakar, 16-19 mai 2006), « Tribulations coloniales et duplicité indigène. Jeux de pouvoirs et domination en Haute Casamance », nous revenons sur les rapports étriqués entre Musaa Moolo et les autorités françaises.
16. Elle englobe les communautés rurales de Madina Yéro Foula et de Pata qui accueillent sur leur sol les « migrants » venus du bassin arachidier.
17. Archives Nationales du Sénégal (A.N.S) 2G1/73 Sénégal district de Casamance. Rapports d'ensemble trimestriels 1899.
18. La première école vétérinaire est créée à Bamako en 1924. Elle se chargera de former tous les vétérinaires africains de l'Afrique Occidentale Française.
19. Cette même politique sera reproduite par l'Etat sénégalais indépendamment dans le Ferlo par exemple.
20. Territoire sous commandement d'une famille noble dont l'ancêtre aurait participé à la guerre contre les Mandingues. C'est d'ailleurs en guise de récompense que le commandement de cette zone lui fut octroyé.
21. Un rapport colonial daté de 1931 indique que le marabout de Madina Al hadji et ses talibés « s'occupent d'agriculture et sont de précieux auxiliaires pour la vulgarisation agricole dans la région avoisinant Kolda. Leurs plantations (arbres fruitiers, légumes, cultures vivrières et industrielles, produits de cueillette) sont en grand progrès cette année. Ils utilisent des charrues et des charrettes, des bœufs d'attelage dès le début de l'hivernage 1932 », voir A.N.S, 2G31/78, Sénégal. Cercle de Kolda. Rapport annuel 1931. Questions religieuses. Islam Extension et Régression-Construction des Mosquées. Surveillance des marabouts.

22. De toutes les façons durant cette période, personne ne jouissait de la citoyenneté (sauf bien sûr ceux qui étaient dans les quatre communes). Ils étaient tous sujets de la France et devaient obéir à son autorité.
23. C'est dans le cadre de la mise en place des communautés rurales que des dissensions internes vont voir le jour dans cette agglomération. Fondé en 1936, par un marabout d'origine toucouleur avec le soutien de populations peules originaires de la Guinée portugaise, le village de Madina Gounass va voir croître sa population, suite à une migration soutenue de populations venant du territoire bissau-guinéen, mais aussi de la vallée du fleuve Sénégal. Ce gonflement de sa population va créer un déséquilibre démographique à la faveur des Toucouleurs venus en masse répondre à l'appel du marabout. Et du même coup, il provoque un rétrécissement progressif des terrains de culture. Mais c'est bien l'avènement du politique qui désarticule les relations entre Peuls et Toucouleurs. Les premiers pensent faire valoir leur antériorité et les seconds légitimer leur affluence par la bénédiction du marabout. Le pouvoir était bien partagé, les Toucouleurs contrôlaient le pouvoir spirituel tandis que les Peuls exerçaient le pouvoir temporel. Voir N'gaïde 2002a cité en bibliographie.
24. Autant le village de Bantankountou est acquis à la LD/MPT, autant celui de Madina El hadj était sous le contrôle politique du parti socialiste. Le bras de fer reste encore vivace et reflète, à notre sens, la prégnance des conflits antérieurs. Le choix du village doit avoir été guidé par le rôle que jouent les marabouts dans les mobilisations politiques.
25. La naissance de la région répond à un souci purement politique. En effet, dans sa volonté de limiter l'implication des populations peules dans le conflit casamançais, l'Etat procède à une réorganisation administrative et érige Kolda en région. D'ailleurs, cette érection a suscité des contestations de la part des ressortissants de Sédhio qui revendiquaient l'antériorité de leur ville dans l'exercice du pouvoir administratif en Casamance, mais aussi des mécontentements par rapport au choix de Kolda au détriment de Vélingara.
26. Citation tirée de la version imprimée en notre possession et extraite du site : <http://www.mekonginfo.ng/mrc/html/praset/pras8.htm>
27. Il faut cependant relativiser cette situation.
28. Le terme qui les désigne en pulaar est *arani*, qui peut être traduit comme le non natif de la région (non autochtone) n'ayant aucune attache réelle et aucune légitimité historique. Les haalpulaar sont considérés comme des *jiimoobe*, les colonisateurs par excellence. Et ceci se traduit parfaitement bien dans le conflit qui les oppose aux Peuls dans la ville religieuse de Madina Gounass, agglomération située à la lisière du parc de Niokolo Koba.
29. Dans N'gaïde (2004b), nous revenons sur le concept d'ethnie et essayons d'analyser à quel moment ses rouages sont sollicités, de manière abusive, au point de générer des conflits d'une violence incontrôlable.
30. Les habitants de ces villages ont même participé à la présidentielle de 1988. Donc les autorités sont bien au courant de ces installations, mais ferment les yeux devant cette réalité. Aujourd'hui encore, elles continuent d'exercer leurs droits civiques tout en continuant d'occuper « illégalement » les forêts classées. Une mission effectuée en juin 1995, nous a permis de recenser plus d'une vingtaine de villages installés dans la forêt "classée" de Pata. La plupart d'entre eux furent créés vers 1988.

31. De gros villages s'y sont établis. Il n'est pas rare d'y trouver des villages regroupant plus de 1000 habitants ; densité assez rare dans la région à concentration peule. Nous avons pu le constater de nous-même lors de nos différentes missions de terrain.
32. Il est estimé à 7,9 pour cent dans la communauté rurale de Ndorna et de 4,7 pour cent et 2,9 pour cent de 1976 à 1988 dans celles de Médina Yéro Foula et de Fafacourou.
33. Enquêtes Fanchette & N'gaïde 1997.
34. Enquêtes N'gaïde à Bayoungou dans la communauté rurale de Ndorna, en 1995, 1996, 1997 et 1998.
35. Informations étayées par nos propres enquêtes de terrain.
36. Il nous est arrivé, lors d'une mission de recherche dans la localité, de participer à une délimitation entre deux terroirs villageois avec l'aide d'un GPS.
37. Le Petit Robert définit la coutume comme suit : « Habitude collective d'agir, transmise de génération en génération ». Nous adoptons cette définition plus simple à saisir et moins compliquée à discuter. Il ne faut pas seulement comprendre cette notion dans sa dynamique purement « fonctionnelle », mais surtout dans l'épaisseur historique de son contenu. Lire aussi à ce sujet le livre de Mahmood Mamdani cité en bibliographie et particulièrement le 4ème chapitre de la première partie (« Le droit coutumier. La théorie du despotisme décentralisé », pp. 157-196).
38. Le Petit Robert nous explique que l'autochtone est celui « qui est issu du sol même où il habite, qui est censé n'y être pas venu par immigration ».
39. Nous avons participé en 1994, en qualité de superviseur d'enquêtes, à une mission conjointe Banque Mondiale/Ministère de l'Agriculture du Sénégal chargée de l'évaluation de l'impact de la loi foncière 46-64 sur le fonctionnement des communautés rurales.
40. Malgré la profondeur de la pratique de l'islam dans cette partie de l'Afrique, quelques modes d'organisation échappent totalement à sa « législation » ; et ceci est perceptible dans presque tous les domaines de la vie. Mais la tradition est plus forte que tout. Lire, pour une comparaison, l'ouvrage d'Achille Mbembe, *Afriques indociles. Christianisme, pouvoir et Etat en société postcoloniale*, Paris, Karthala, 1988.
41. L'harmonisation du droit ne se heurte pas seulement aux « pratiques » dites coutumières, mais aussi à un faisceau d'éléments fortement imbriqués et qui restent insoupçonnés. Le soubassement culturel de cette entreprise est rarement pris en compte. Dans le cas du Sénégal, sans en exagérer sa portée réelle, le projet « islamo-wolof » sur lequel repose toute la politique de l'Etat s'apparente (ou est interprété), dans bien des cas, comme une volonté d'imposition d'une culture sur les autres. Cette lente progression du projet vers les périphéries des quatre anciennes communes (Saint-Louis, Gorée, Rufisque et Dakar) entraîne des frustrations qui se manifestent non pas dans le rejet de l'Etat en tant que tel, mais dans le refus de se laisser phagocyter par la culture wolof, sans tomber, toutefois, dans la simplicité de la *culturalisation* des conflits ; force est de constater que ce rejet apparaît de manière explicite dans les discours des acteurs locaux. Nous pouvons constater aisément cette situation dans la politique de l'Etat mauritanien par exemple.
42. En effet, en 1996, un sous-préfet prenait part pour les paysans wolofs contre les Peuls qu'il qualifiait de « paresseux ». Mais il fut relevé de ses fonctions.
43. Artificialité des frontières et chevauchements territoriaux...

44. La dramatisation du conflit sénégal-mauritanien en 1989 qui opposait agriculteurs et éleveurs illustre bien cette dichotomie née des clivages entre deux Etats modernes dont les législations foncières n'ont pas pris en compte l'existence de populations transfrontalières exerçant d'une rive à l'autre des droits fonciers séculaires.
45. L'exemple de la marginalisation et de l'expulsion des Peuls de leur zone de transhumance dans le futur bassin arachidier renseigne amplement sur la destruction programmée de leur genre de vie et de leur marginalisation dans le processus de « modernisation » de l'économie nationale. Aujourd'hui, leurs descendants alimentent un réseau de mendiants qui entre dans le décor quotidien de beaucoup de villes ouest-africaines. Dakar n'échappe pas à cette réalité.
46. L'exemple le plus voyant est celui de Jean Christophe Mitterrand impliqué dans d'autres transactions en Mauritanie, la pêche notamment.
47. Le nouveau code foncier rural ivoirien (Loi 98-750 du 23 décembre 1998) qui exclut les non Ivoiriens de l'accès au foncier rural.
48. Lire l'article de Pascal Marie-Amiot cité en bibliographie pour saisir la complexité d'« un paysage foncier inégalitaire et ségrégué par le développement séparé » à partir des cas zimbabwéen et sud-africain.
49. Philippe Braud (ouvrage cité en bibliographie) nous dit, pour définir l'Etat en Afrique : « C'est sans doute dans cette région du monde que la colonisation a provoqué la coupure la plus radicale entre, d'un côté, les conceptions et les pratiques traditionnelles du pouvoir et, de l'autre, cette innovation que constitue la création d'Etats construits de toutes pièces, selon un mimétisme institutionnel parfois étroit vis-à-vis de la puissance coloniale » (p. 145).
50. Page 5 de la version imprimée de l'article de Kamara & Leservoisier en notre possession.
51. Lire l'article d'Alain Rocheduge cité en bibliographie. Citation tirée de la version imprimée en notre possession, p. 11.
52. Lire avec intérêt l'illustration qu'en donnent Kamara & Leservoisier pour apprécier la complexité de ces règles et leurs conséquences sur les relations sociales.
53. On devrait dire les « régimes coutumiers », car chaque région et chaque communauté avaient ses pratiques et appliquaient ses lois en fonction de ses activités principales et des modes de territorialisation qui lui sont propres.
54. Il serait prétentieux de notre part de faire une recension exhaustive des blocages apparus dans l'application des lois de la décentralisation dans la région de Kolda. Une étude plus fouillée est nécessaire pour en dresser les grandes lignes et saisir l'ensemble de ses déclinaisons.
55. Observatoire de la gouvernance locale (SAFEFOD, voir leur site : <http://www.safefod.org/decentra/Pdecent.htm>).
56. Beaucoup de dirigeants de ces instances sont d'anciens fonctionnaires à la retraite et affiliés aux politiciens de la capitale plus soucieux de maintenir leur emprise sur leur clientèle que mus par une volonté d'asseoir une véritable démocratie locale. Aussi la majorité des présidents de conseils ruraux et les membres de mêmes conseils sont-ils analphabètes et ne sont-ils pas au fait des textes de lois qu'ils sont censés appliquer. Les populations, elles aussi, malgré les progressions par le biais de l'alphabétisation en langues nationales, sont mal informées de la teneur des lois qui réglementent leur vie, leur assignent des droits et des devoirs envers l'Etat et leurs citoyens.

57. Dans le nord de la Kolda, un sous-préfet se « plaisait » de qualifier les Peuls de paresseux ne voulant pas exploiter les richesses de la région et empêchant du même coup les paysans wolofs de profiter de ces terres. Ces attitudes ne garantissent pas la quiétude dans une région confrontée à des difficultés de toute sorte.
58. Lire notre communication, « Stratégies d'occupation de l'espace et conflits fonciers : les marabouts Gaabunke et les Peuls Jaawaringa (Région de Kolda, Sénégal) », in J. Bonnemaïson, L. Cambrézy, L.-Q. Bourgeois, Actes du Colloque : *Le territoire, lien ou frontière ?*, Cédérom, Paris, 2-4 octobre 1995, 18. + 2 cartes.
59. Notons aussi que depuis quatre ans, le Parti démocratique sénégalais est en train de se construire de nouvelles allégeances qui vont lui permettre d'assurer son ancrage à l'intérieur du pays. Cette recomposition du paysage politique aura, elle aussi, des répercussions durables et profondes sur l'évolution de la région.
60. Leur résistance face aux maladies « africaines », par exemple.
61. Si ces questionnements doivent être au centre des préoccupations dans les recherches académiques, il est plus nécessaire que les décideurs politiques en prennent conscience quand il s'agit de légiférer et surtout de veiller à l'application stricte des lois qu'ils édictent.
62. Parlant d'une autre situation mais qui s'apparente, dans ses différentes manifestations, de la situation qu'on peut observer en Afrique, Amin Maalouf (ouvrage cité en bibliographie) nous dit : « Dans de nombreux pays où se côtoient aujourd'hui une population autochtone, porteuse de la culture locale, et une autre population, plus récemment arrivée, qui porte des traditions différentes, des tensions se manifestent, qui pèsent sur les comportements de chacun, sur l'atmosphère sociale, sur le débat politique » (p. 49).
63. On peut multiplier les exemples de conflits entre ceux qui revendiquent leur « autochtonie » par rapport à leurs concitoyens qui deviennent, subitement, des étrangers dans leur propre pays. Le génocide rwandais de 1994 puise sa motricité dans l'opposition entre Tutsi et Hutu.
64. Le conflit mauritano-sénégalais et son glissement progressif vers un conflit mauritano-mauritanien sont un exemple patent d'une tentative de « purification ethnique » qui trouve sa légitimité dans l'indexation d'un certain nombre de citoyens mauritaniens déchus de leur citoyenneté, car considérés, comme par hasard, comme des Sénégalais. L'enjeu principal de cette épuration ethnique était de changer, de manière considérable, le visage démographique de la vallée du fleuve et de permettre aux « vrais » citoyens mauritaniens, les Arabes, d'exploiter les riches terres de la vallée que les « autochtones » défendent au prix de leur vie. L'expropriation de fait des propriétaires fonciers sénégalais et mauritaniens qui avaient des droits fonciers sur les deux rives, après les événements de 1989, est expressive en la matière.
65. Le constat qui se dégage de son application dans la moyenne vallée est d'avoir renforcé le rôle des aristocraties foncières de la société haalpulaar (toucouleur), alors que la réforme foncière du côté mauritanien dépossède ces derniers au bénéfice des agro-businessmen arabes, car ici la charia islamique prime sur les coutumes négro-africaines.
66. Lire à ce sujet l'ouvrage de Dominique Schnapper, *La communauté des citoyens. Sur l'idée moderne de la nation*, Paris, Gallimard, 1998, 228 p., pour saisir les enjeux que suscite la mise sur pied d'un « projet politique » capable de permettre à l'ensemble des membres de la République de « transcender par la citoyenneté » les « appartenances particulières ».

67. Il est vrai que cette situation n'a pas pris des proportions exagérées dans la région de Kolda, au point de conduire à une « expulsion », mais dans d'autres pays africains, la situation peut déboucher sur le bannissement : Mauritanie en 1989, Rwanda en 1994 et Côte d'Ivoire en 2000.
68. Mais aussi de préjugés tenaces sur la paresse des Peuls.

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Urban Land and Citizenship Struggles in Nigeria: An Analysis of Access from 1979 to date

Yomi Oruwari and Opuenebo Owei

Introduction

Land for development especially through public acquisitions is increasingly scarce in Nigeria's major urban centres. This was not always so. The modern city in Nigeria, like in most other African countries is a colonial creation. Land for urban development was initially obtained through the acquisition of land from local indigenous groups using the instrumentation of the Lands Acquisition Ordinance Act of 1917 and the related Township Ordinance. It enabled government to acquire very cheaply, large areas of prime land for the creation of residentially-segregated Government Reserved Areas (GRAs) where the Europeans lived; government offices; public utilities and industrial estates. The land was compulsorily acquired under the notion of 'public interest' and was called 'Crown Land' in deference to the British royalty that was the head of government. Crown land was rechristened 'state land' after the adoption of the 1963 Republican Constitution. Thus, title to land implying 'the lawful right of possession' (Olawoye 1974) easily passed from indigenous groups where an interest in land is held under customary law to the colonial government, having been converted into an interest under English law.¹

Over the years and in spite of national governments, such acquisitions have increased. For example, Port Harcourt has seven GRAs with average plot sizes of about 2,000 square metres. This is in sharp contrast to the normal current plot size of 450 square metres. Plots in GRAs that were allocated on the basis of five hundred thousand naira² each up till five years ago could then be sold by allottees at between two to four million naira at the time (now between 30 and 35 million

naira). Having a government allocated plot is thus an avenue for land speculation and personal wealth. It is not surprising that most of the allocations went to people in government or those related to them as part of political patronage.

This transfer of interest in land using British imposed laws laid the foundation for the emerging arenas of conflict over urban land in Nigeria. Under customary laws, land belongs to the community, the village or the family. Individual ownership of land has been contentious. In the case of *Amodu Tijani v. Secretary of Southern Nigeria* (cited in Olawoye 1974), Lord Haldane in his judgment argued that the notion of individual ownership of land was quite foreign to native ideas. However, Olawoye (1974) contends that individual ownership of land has always been a feature of customary tenure and an individual can acquire absolute ownership of land through self-help or through a grant from the traditional authority, or by purchase or gift from a previous owner. Also, under customary law when land has been allocated to a member by the tribal authorities, such a member acquires a right to occupy the land that is transmissible to his male successors. Fiberesima (1998) supports the view that under customary land law, whatever an individual acquired by his own effort – physically, financially or otherwise was recognised as his self-acquired or individual property. The key issue here was that access to land; ownership and user rights were community-based and thus depended on one belonging to the community. However, this does not debar one from acquiring absolute ownership through purchase at the market value.

As has been rightly argued by Migot-Adholla and Bryce (1994), the colonial state created a form of citizenship in which rights depended on 'tribal' as well as 'national' membership. The introduction of land registration under colonial rule was aimed at extinguishing customary claims over land. In Port Harcourt, the conflict over land derives from the perception of the original Ikwerre and Okrika owners of the land that successive governments had denied them the right to retain ownership and the power to dispose of this in their own way and to serve their own interests and has transferred these rights to the state. Those granted statutory rights of occupancy by the state are regarded as non-natives and under customary law as 'strangers'. When someone from a local community says, this is our law; the inference is that it is the way of life or custom of the people. A group's custom is native law to the group (Fiberesima 1998:5). Thus, anyone who does not belong to that group is considered a stranger even he or she has lived within the community for long. The dilemma faced by local urban groups is that the holder of the statutory right of occupancy has the exclusive right to occupy the land against all persons other than the Commissioner responsible for land matters in the state. Under customary laws, this is not acceptable.

Government has used the lure of populist programmes dating from the workers' housing schemes of the colonial regime to the low-income housing programmes of the successive governments to put pressure on indigenous urban communities

to part with prime urban land. In the Port Harcourt metropolitan area, large areas of land acquired for low-income housing programmes were subsequently sold off to individuals for private housing development as government housing programmes failed. In the process, those who have the greatest need for land are not the people who get it from government allocations. To a large extent these acquisitions are the arenas of conflict. As pressure for land increases and livelihood sources of indigenous communities diminish with conversion of agricultural land to urban use, so does the belligerence of youth groups who claim not to have benefited or participated in the sale of community land. Invariably, such conflict has escalated to private direct acquisitions, as rampaging groups of youths demand the payment of different levies (community development levy, elders levy, youth levy, access road levy, security levy – to name a few). The imposition of fencing, sanitation, community development and other levies by the local governments has further complicated the issue. Often the local councils resort to the use of touts to collect these fees with attendant violent assaults. On any single development, fees are paid continually to different groups most of which are not receipted for. Developers are at the mercy of these youths especially as violence accompanies their demands.

Today, the existing modes of land acquisition include inheritance (still existing in land held by local indigenous groups), allocation by governments, purchase and land rentals. The state's registration of titles to land has led to individualisation of land and within the context of the Land Use Law of 1978 (now drafted into the laws of the Federation of Nigeria, 1990 as CAP202), has replaced the ownership rights with user rights. The Nigerian Federal Government introduced the Land Use Decree in 1978 to facilitate land acquisition for public purposes. By this act, absolute ownership of land is vested in the Governor of each state who holds the land in trust for the people. The governor issues a Certificate of Occupancy (C of O), which together with the survey plan, forms the title of ownership to land. This is the highest legal recognition for owners of land in Nigeria. However, this certificate is only worth the paper on which it is written as actual permission to develop and use the land comes from community groups. There is no response from either the state or local governments to this trend. For example, in Port Harcourt, the molestation of allottees and most times confiscation and demolition of the fence and buildings being erected is a common occurrence. When asked about the problem at a professional forum recently, the State Commissioner for Land Matters responded that the State Government did not want to get involved in such matters and that the victims should use the courts to get justice. However, everyone in Nigeria knows that this is a dead-end. Litigation is not only very expensive in Nigeria; to get justice on any issue takes between five and ten years at the earliest. Meanwhile, presently, the government is no longer able to acquire land from many urban communities as the communities are more enlightened and are very much aware of their rights. At the same time, land

available for urban development is dwindling. Moreover, the communities are reclaiming old acquisitions not yet developed forcefully and in full knowledge of regulatory bodies, and selling them outright to new sets of developers. These are usually unrecorded transactions but are sometimes smuggled successfully through the registration process with the connivance of state officials. The law has also sometimes been used to rob those regarded as 'opposition' to existing governments of their rights to land through the revocation of the certificate on grounds of 'public purpose'.

The urban land market is thus increasingly complex and unregulated. Much litigation on land exists in the high courts in Port Harcourt. The land development process has become extremely stressful and unnecessarily expensive, way beyond the reach of the masses of poor households who are increasingly forced into marginal settlements known locally as 'watersides'. It is a process of progressive marginalisation in the urban land market in Nigeria where the needs of the most vulnerable groups for land are not even considered. Even in the marginal lands, Temporary Occupancy License (TOL) is given. The land can be reclaimed from the occupiers by government with the shortest possible notice. It is also stated in the license that no compensation is paid when government reclaims the land after giving seven days' notice and that the Chief Lands Officer reserves the right to remove any building (that must be a temporary structure) on the land at the time the license is terminated. Thus the occupiers have no rights when the license is revoked and they cannot seek for redress in the court of law when ejected from the land.

This chapter evaluates the arena of conflict arising from the differential access to land for urban development in Nigeria, using Port Harcourt since 1979, after Land Use Law of 1978, as a case study. Specifically, the chapter assesses the distributional impact of public land acquisitions, the impact on local urban communities and the differential impact on formal and informal physical development in the city.

The study on which this chapter is based used secondary sources of data, including government records, to provide the details of public land acquisitions and allocations in Port Harcourt. Major actors involved in the acquisition and allocation processes were also identified. In addition, community groups (chiefs, elders, women and youths), government officials, professional groups (the Nigerian Bar Association, Architects, Town Planners, Land Surveyors, and Estate Surveyors and Valuers), and members of the state legislature, local councillors, and police and public opinion leaders in the state were interviewed to gain their insights into the land markets in general and on the conflicts between indigenous urban communities and developers (both public and private). The interviews also explored the question of urban land policy and its relevance at the local level. In-depth case studies of selected allottees who have had problems of forceful seizures by the local communities were conducted.

The chapter is organised as follows: this introduction is followed by a background discussion of land rights and citizenship in Nigeria. Section three explores the Port Harcourt case in some detail, examining compulsory acquisitions by government, and their impacts on livelihoods. This is followed by a section which examines community struggles, their foundations, instances and impacts on state-community relations, intra-community relations and on the land tenure system. The last section of the paper is the summary, conclusions and recommendations.

Land Rights and Citizenship in Nigeria: Historical Perspectives

From the 1970s, African countries have been undertaking land reforms in one guise or another. The aims have been to promote economic growth, encourage more sustainable management and reduce poverty. Land remains an asset of great importance to African economies, as a source of income, food, employment and export earnings. At the same time, land continues to have great social value. Of note is that access to land is of special importance for many poor people who have limited opportunities to obtain profitable income in both the formal and the informal arenas.

In Nigeria by 1978, the free market approach to land reform was very much in evidence, manifested by shifts from customary tenure to individualised freehold rights. This was deepened by the individual land registration and titling that dominated land policy prescriptions of the international finance institutions in the era of structural adjustment. This culminated in the enactment of the Land Use Decree in 1978 by the Federal Government. The Decree vested all urban land in a particular state (i.e. a region) in the hands of the state with the state governor as the custodian. In non-urban areas, this power was vested in the office of the chairman of the local government area (LGA). Under this law, there is a distinction between statutory rights of occupancy that the government grants and customary rights of occupancy that the LGA chairman grants. However, the Land Use Decree did not acknowledge the wide range of stakeholders with interest in land and its role both as an economic good and a social and political asset. The policy that was imposed lacked popular support and understanding. Adequate consultation was not carried out.

The pitfalls of this approach, in particular its high economic and social costs, and negative consequences for the poor and, most importantly, the inability of the land use decree to free land for large-scale agriculture (or any development) recommended by the donor agencies dictated that the access to land approaches and policies (invisible or apparent) must be re-examined. To date, it has been difficult to secure rights to land, harmonise customary tenure systems and, most importantly, resolve land disputes in a transparent way and without leading to violence.

Problems arising from land tenure and reform processes emanated from colonisation and the imposition of an alien legal system on top of customary rules for managing people and especially land that resulted from the contradiction between customary and statutory tenure systems. Land policy and tenure reform processes need to be set within broader objectives and programmes pursued by government to ensure a consistent approach. Such linkages with other areas of policy should enable these different activities to build constructively on interventions underway in their respective domains. For example, as seen from implementation, it was (and still is) problematic to vest all lands in the government without first considering the cultural and emotional attachment to land in Nigerian society. At the same time, indigenous groups that originally owned the land on which Port Harcourt is built rightly consider all others, including government, who are not Ikwerre or Okrika as strangers. Equally, leaving the disposition of urban land purely in the hands of land-owning families has achieved little development without understanding the constraints under which they live and the limited economic opportunities they face.

The claims to the land in Port Harcourt by Ikwerre and Okrika people have led to the appellation of Ikwerre native landlords and Okrika-Port Harcourt Aborigines. For example, indigenous Okrika people have parcelled out and sold government reclaimed and sand-filled land, giving traditional names to the streets, conferring chieftaincy titles on individuals and giving them power to control access to the land. Government allottees are unable to gain access. The inability of government to respond appropriately using Land Use Act of 1978 is telling. Thus, it is correct to say that, as far as the indigenous communities are concerned, the C of O is worth only the paper on which it is written. The right to use is dependent on the developer's direct negotiation with the original owners of the land. This is aided by the fact that the tribal connotation of citizenship in Nigeria is evidenced in the reality that an individual could have lived in an urban area all his/her adult life but in death, their remains are taken to their 'hometown' or 'place of origin' for internment. In similar vein, according to Nigerian local traditions which are accepted by the government, a Nigerian cannot claim traditional rights of an area if his/her ancestors are from another area, no matter how long he/she has lived in the area.

In the urban areas in Nigeria, over the years, the abundance of land and easy access to resources for traditional agricultural-based activities has declined. Rapid population growth and private allocation and sale of land coupled with the dwindling of land acquired and compensated for by the government has resulted in the growth of landless urban villages that do not have land for their people to farm, build houses, and other physical developments. This situation has fostered conflicts in the cities.

Dualism in land policy has underpinned a history of conflict in land relations. From the colonial period, the state established its eminent domain over national

territories, so that today land rights are expected to originate from the parallel systems of customary and formal laws. The resulting dualism underpins the competition for land between the state and the local indigenous population in the city especially as the state is exerting its authority to allocate land for public schemes. Such schemes include land for housing (especially for the rich) that is allocated, partly serviced and not occupied for a long time because of incomplete provision of services, e.g. roads, potable water, and electricity. The emergence of pluralism in land laws, especially with the superimposition of English-oriented statutes, and consequent requirements of title registration over customary land laws, is one that has been well-documented (Whitehead and Tsikata, 2003). However as Fibresima (1998) argues, customary law is 'custom' to the particular group of people. It has its system of control, allocation and disposal of land that has existed for that group from ancestral times and is presided over by the elders. Attempts by national governments to superimpose statutes over customary laws on land have always been problematic.

In Nigeria, since independence in 1960, there has been the problem of creating the Nigerian State. What we have presently is incomplete. A state exists if there are autonomous entities that evolved out of the peoples' concerns irrespective of the government. The nature of the federal government in Nigeria derived from ethnic groups instead of geographic delineations that perpetuate the psychology of domination that has affected access to the government and the resources to be disbursed. The people in government owe ordinary people no responsibilities, as they do not vote them into power. The rulers have no ideologies, directions or places they want to carry the people to. The governors disburse state funds as if they are personal funds without any budgeting principles or accountability. This shows that the rulers have no respect for the views of the people they rule. Their being in power is not dependent on the evaluation of their performances. All of these have led to the struggle by the people in respect to the allocation of resources as they do not understand and are not part of the factors affecting the allocation. In the specific case of land, there are so many laws affecting urban land in Nigeria. These include: law of statutes and codes; administrative law; common law; and the new law developing in urban areas that may be regarded as a combination of systems i.e. the popular law (Tribillon 1995). This has produced an inconvenient situation for the legal profession in processing litigations with respect to land cases. This is more so for a private developer. Both are saddled with the problem of which law to apply and the result is an embodiment in property conflicts and rival claims to the same land.

Noted in the literature are the following:

- i) Land rights are at the heart of ongoing struggles over citizenship and democracy.
- ii) Indigeneity implies rights of access to land, among other things.

- iii) The question of when migrants become citizens or indigenes is still acutely posed in many areas in Africa.

In the specific case of Nigeria, indigeneity has to do with traditional antecedents and does not derive from the nation state. It is only at the national level that citizenship is conferred on the individual.

First in Nigeria, ownership of land is tied to the rights of an individual as an indigene and not as a citizen. That is why traditionally, no matter how long an individual and his (or her) offspring have resided in an area, he (or she) cannot be (or does not want to be) an indigene of the area, and thus, does not have land rights in the area. During the colonial period, the British Government was able to acquire land from the communities for 'public use' without conflict. This stemmed from the fact that: agreed compensations were paid at the right time; indigenes were not threatened at the time with the dwindling availability of land for farming as obtains presently; and, the remaining land was more than enough to sustain their farming activities at the time. To a great extent, it was visible to the indigenes that the land was actually being used for public purposes. As most of the acquired land was far away from their villages, the existence of the villages was not threatened as obtains presently.

However, with successive military and civilian rule in the country, although land acquired compulsorily from the natives was meant for public use, it was (and still is) left fallow for a long time; compensation is meagre and is never paid when due; and, most important, there is always a change in use from public use to allocation to private individuals. When the natives see their land, which had been acquired by government agencies for public use being transferred to individuals at paltry costs, they see this action as an infringement of their right to exist. This action ultimately leads to conflict and violence while the natives insist that part of the land must be returned to them for disposal or use.

Second, we would like to examine the Land Use Decree of 1978 from the following perspectives. Basically, the land use law was introduced to facilitate land acquisition for public purpose by vesting absolute ownership of land in the Governor of each state who is expected to hold the land in trust for the people. Thus, ownership right is taken from the people and what they are expected to have is user rights. Traditionally, this is not acceptable to the people. It is communal ownership of land that is conferred by the fact that one belongs to a particular area, i.e. an indigene. Except this right is recognized by government agencies in land laws, the laws will continue to fail in the Nigerian context.

Third, we must accept that land is the identity of the people. Even when the land is sold to individuals or acquired by government, the natives still see themselves as the landlords. Because of the attachment to the land, it takes a long time for the natives to let go of the land completely. That is the main reason why they still impose taxes and levies on those who have bought the land from them.

It is also the reason why contiguous peaceful communities can suddenly become violent to the point of serious hostility over ownership of a piece of land.

Fourth, during compulsory acquisition of native land, promises are made to the communities that are most times not fulfilled. For example, there is a national government directive that unskilled labour for any facility provided on an acquired land must be sourced from the communities that gave the land. Presently, this is not monitored and most establishments do not obey the directive. And most times the communities do not see themselves as part of the project on their land. This failure of government and its agencies to fulfil its obligations in the land acquisition process is tantamount to denying land owners their rights as indigenes.

In summary, we must recognise the relationship between land, indigeneity and citizenship. Because of its traditional and emotional connotations, citizenship cannot confer rights of indigeneity on an individual in Nigeria no matter how long the person has lived in an area. Our fieldwork showed that communities are not yet ready to confer the right of indigeneity on a migrant in any part of the state. Thus, a migrant will always remain a migrant. And, as reiterated by Stavenhagen (2006), indigenous people in developing countries relate with the land as identifiable territorial communities. At the same time, the state cannot compulsorily take land from the natives again – that is all they have for their economic survival. Generally, access to information has improved people's awareness of global happenings. Thus, people are very aware of their rights and privileges in their communities and nation. To be effective, after compulsorily acquiring land for its projects, government must use open market mechanisms in purchasing the land for projects from the natives.

Noted is the fact that because of urbanisation and consequent growth of urban areas, there is the need for government to be actively involved in urban development. This necessitates acquisition of large areas of land for physical development. The problem is the process of acquisition. Compulsory acquisition has created the dualism in land policies that accounts for the present chaotic land market, i.e. government acquisition and sale by the natives to private individuals. The official development control mechanisms have also failed to regulate land development in the metropolis. In the last twenty-five years, no one, not even anyone in government, is clear about the planning laws operational in Rivers State. The Port Harcourt Master Plan (1975) was prepared under the Town and Country Planning Laws of Eastern Nigeria CAP 126 of 1948. Under this law, town planning regulations were under the control of the Port Harcourt Planning Authority and the Obio-Akpor Planning Authority. A recommendation of the Master Plan is that this law be revised to take care of new realities in land-use planning. However, the military regime in power at the time, established the Port Harcourt Metropolitan Planning Authority which never took off and finally

ceased to exist. Since then, there has been no legal framework for land use control in Port Harcourt.

The 2003 law for Physical Development enacted by the present civilian regime provided for the establishment of a State Planning Board and Planning Authorities in all (23) local government areas of the State. It has never been implemented. The same *laissez-faire* attitude has also been adopted in the implementation of the State land development and land registration laws. Section 4 of the Land Development (Provision for Roads) Law Caption 73 initially dated 1933 makes provisions that are to be complied with before land is sold off in lots. This includes the making of lay-out plans that indicate what parts of the land are to be reserved for roads. Local land owners are obviously not acting in accordance with this law. Caption 74 of the laws of Rivers State dates back to 1917 and provides for land registration. This is abused by government officials, communities and private buyers in that, transfers of titles to land in Port Harcourt go on mostly outside the formal governmental processes and channels. In April 2009, the Rivers State government established the Greater Port Harcourt City Development Authority by enacting a law (Law No. 2 of 2009). This created a new planning area covering a total of eight out of the twenty-three local government areas in the State. The planning area is designated the Greater Port Harcourt City. Presently, a master plan has been prepared for this area and negotiation is going on with local land owners to facilitate the acquisition of land for development of Phase I of the plan. The full impact of this development on land ownership and on urban management is yet to be assessed.

To reduce the chaotic conditions, two major areas must be explored. First, all acquisitions by government and private entrepreneurs must be on leasehold basis. The present finality and stresses emanating from sale of land by the natives will be removed. Second, land laws must recognize the importance of compulsory acquisition in freeing land for public development, but compensation procedures have to change.

However, the new thinking is that government agencies must operate market mechanisms in purchasing land like any other entrepreneur. In reallocating the land to individuals, cross subsidisation principles must be used, i.e. let those who can afford to, pay highly to subsidise those who cannot at both 'public use' and 'private use' levels. This is a formidable task as the people expected to propose and implement the right policies and programmes are the ones benefiting from the present skewed ones (Oruwari 2006).

Recognised is the fact that it is by actually defining citizenship and indigeneity in the local context and recognising their limitations that we will move towards freeing urban land for development. We expect that if the land laws take cognisance of the issues highlighted, and it is taken as a process, most of the struggles emanating from land will be solved as enforceable legal changes would

be made. This, we expect, will be backed by an effective land administration system.

Citizenship is about 'individual rights and obligations' and about 'belonging and participation in political communities'. It is therefore both a conceptualised concept and a contested one, as it is based on specific social and political contexts and historical legacies. However, in this chapter, two contested areas are explored. First, is the contest over land that arises from who gets the allocation of land acquired by government agencies, the potential and actual development value of such land as opposed to the struggle for livelihood by the indigenous communities who have lost their land. Second, is the contest that arises because of urbanisation and the consequent growth of urban areas that necessitated the acquisition of large areas of land (farmland of urban indigenous communities) for physical development using compulsory purchase powers and payment of meagre compensation that has not effectively filtered down to the grassroots in the urban indigenous communities.

In this chapter, we see the land issue in the urban areas in Nigeria as part of the struggle for the allocation of resources. We analyze the successive nature of access to urban land for development in Nigeria while using Port Harcourt as a case study from 1979, since the introduction of the Land Use Decree, to date as the problem has become chronic. If more light is shed on this issue, it would contribute to the understanding of access to urban land for development in Nigeria and maybe the sub-Saharan African region.

The Port Harcourt Case

Compulsory Acquisitions by Government

Port Harcourt, which initially consisted of segregated Ikwerre and Okrika villages was created and developed by Lord Lugard in 1913 to act as the railway terminus and a port to constantly evacuate the produce from the coalmines at Enugu and the rich palm produce and trade of the hinterland of South Eastern Nigeria. With the need for labour to construct the railway and port, a lot of migrants flocked to the city from other parts of the country in particular and from other West African countries notably Ghana and Sierra-Leone.

The town grew rapidly, stimulated by the railways, the port activities and the commercial activities of European Mercantile firms. The town has continued to grow and, presently, with a population estimated at one million, Port Harcourt is becoming a commercial nerve centre of Nigeria because it is the capital of the rich oil state – The Rivers State. With the economic decline in the country, a lot of young, footloose, jobless persons (both highly educated and uneducated) are flooding the city daily from other parts of the country in search of jobs in the oil and oil-servicing companies.

Since Port Harcourt's inception, there have been various town planning activities by the colonial administration which conveniently forgot the existing Ikwerre and Okrika villages. Independence did not change the situation. In the last twenty years or so, the rapid expansion of the city that encompassed the native areas, has put a lot of pressure on available land for physical development by both the private and public sectors. Tables 1 and 2 (presented in Appendix 1) show the number of compulsory acquisitions and the paltry sums paid to the land owners by government in Port Harcourt Metropolis after the creation of Rivers State in 1967 and especially after the National Land Use Law of 1978. Figure 1 shows the administrative map of Port Harcourt Metropolis with the areas compulsorily acquired by government indicated. Figure 2 shows the spatial growth of Port Harcourt in 1986 and Figure 4 shows the area already compulsorily acquired in Port Harcourt core by 1994. At present, there is no appreciable land to acquire again in Port Harcourt except at the urban fringes. Figure 3 shows all areas of public land acquisition in Port Harcourt Metropolis.

Land struggles between various stakeholders in Port Harcourt, has resulted in the uncoordinated nature of development outside the layouts that were planned as site and service schemes by government. When communities repurchase publicly acquired land, they sell mainly to the 'big boys' in politics and industry and also to households desperate to own their homes. These people quickly develop the plots mostly without approval by the planning authorities.

Tables 1 and 2, and Figures 3 and 4 also portray clearly that a major component of the struggle for land in Port Harcourt presently stems from the exhaustion of the land and nothing is left for the indigenous communities to build houses and provide services for their communities. At the same time, all their farm lands are lost to the acquisitions by the government. As their major occupation was farming, the majority of them do not currently have a visible means of livelihoods. Coupled with the national unemployment crisis and the visible affluence of a few elites and those in the oil prospecting and exploiting enterprises in Port Harcourt, the residents in the communities, especially the youths, are aggrieved and frustrated. These they exhibit by invading areas acquired, banked and not yet in use or abandoned, and harassing private developers.

Thus, it can be seen that the present dilemma arose from the inability of the government to foresee the disengagement of the local communities from their traditional occupation, i.e. farming, and planning for it as their farmlands were systematically compulsorily acquired with payment of paltry compensations (Table 2). A critical look at Table 1 shows that most of the land acquired by government has either been left fallow or is littered with abandoned projects. These abandoned project sites are presently occupied by squatters. However, the Government Reserved Area (GRA) Phases 2 and 3 are presently being developed by owners. These are prime lands that the owners were allocated for paltry sums.

Most of the new owners were forced by youths from the communities to pay compulsory levies and taxes before and during construction. The forceful demand of these levies is what leads generally to conflict and sometimes violence.

Land Acquisitions and Livelihood Struggles

Traditionally, the Ikwerre people are farmers. The Ikwerre groups within the Port Harcourt Metropolitan area have lost over 90 per cent of their farmland to urban development.

There have been severe distributional impacts of land acquisition in the Port Harcourt area. Most of Port Harcourt land was, according to Ogionwo (1979), secondary forest and farmland. The immediate impact of its acquisition by government is the loss of farmland and, consequently, the traditional livelihood systems of the natives (i.e. the Ikwerre people) to residential and commercial development.

The land owners have also lost the use value of their land. The value of the land once it is developed in a metropolitan area like Port Harcourt is many times higher than when it is under agriculture. For example, an average plot size of 450 m² when developed as a three-bedroom house can fetch as much as N300, 000.00 per annum as rent. Cassava, which is the staple crop commonly planted by farmers in the area, cannot yield half of the amount for the same period. However, the benefits landowners derive from the compensation paid for the land is not only paltry, but is a one-time payment. Our oral interviews indicate that the money is misspent on conspicuous consumption items like expensive cars, burials and even marrying extra wives. It is for this reason that in Lagos State, for instance, government has instituted the law that gives a portion of the development to the original owners in perpetuity as part of the payment for the land and all land transactions in Lagos Island must be on leasehold basis.

Those who obtain plots of land from government allocations usually pay much less than the open market price. As most allocations are done on the basis of political party patronage or government office, allocations go to those who are rich enough to buy land at the open market price. Thus land is subsidised for the rich. This is one of the major reasons why the youths in the local communities are aggrieved and engage in aggressive

repossession of such land when it lies undeveloped, a situation that most times leads to conflict and violence.

Land is the main source of livelihood, especially for farmers, most of whom are women (Oruwari and Jev 2004). Yet, traditionally among the Ikwerres as in most Nigerian cultures, women are not part of land transactions. Women get user rights to land from the men in the communities – either as fathers or husbands. A man gives land to his son when he gets married so that the new wife can farm on it. This

tradition is being lost as the land is no longer available. Women are also vulnerable because when a man desires to sell family land, his wife, mother or sisters do not have a say and, most times, he may not consult them even when they are farming on the land. As the majority of the farmers are women, they suffer the most from the sale of land. They not only lose their source of livelihood; they continue to plant on undeveloped plots, setbacks and rights of way just to earn an income. It is for this reason that the acquisition of land in excess of what is needed for the purpose by government agencies has been criticised by respondents (especially the females) in our survey. Once land is acquired, especially for public use, it becomes a no-go area for farming. More aggravating is the fact that the physical development of the land does not take place for years or, when it is done, only about one-tenth of the land is occupied. Meanwhile, the women are seriously looking for where to farm. Whole generations, especially among the youths, have become idle as they have lost all farmland to urban use. Sale of land and imposition of different levies have become the chief resource on which to make a living. Thus government allottees and private buyers of land are subjected to harassment regularly by youths in the communities. The only signal they require to invade is any presence of men and materials on a building site. It has gone so far as to touch even the renovation of old buildings. Companies operating in the Trans-Amadi Industrial Layout have to pay several levies to different groups of 'landlords' regularly in order to buy peace. Most important, the inability of government to provide alternative livelihood sources promotes more conflict and crime.

Youths in Port Harcourt are angry because not only did they not take part in the sale of land in their communities; there is nothing put in place to cater for them in respect of the loss of farmland and, presently, most are jobless irrespective of whether they are educated or not. As there is very little land left in the communities, youths presently have to buy land on which to build in their own communities. This in itself is part of the reason for the land struggle in Port Harcourt. Some indigenous communities in Port Harcourt no longer have land even for the indigenes. Unfortunately, even when they repossess the land already acquired by government, the acquisitive tendencies of the youths have led them to sell it off to private buyers. Thus there is visible 'land hunger' in communities within the inner core of Port Harcourt. Only communities on the urban periphery still have some undeveloped land.

When private developers buy land, they are forced to pay all kinds of levies to youths, elders, chiefs and even ground rents to the communities. These levies do not seem to have impacted positively on the youths because different groups keep harassing developers all through the construction process of the buildings. Even after the construction is completed, levies are imposed by the youths and these are forcefully effected sometimes leading to violence. This is a new trend that is likely to continue as land gets scarcer.

Land Struggles in Port Harcourt

Foundations of Struggles

The struggles by local indigenous urban communities to re-possess land acquired by government are a result of public awareness due to access to global information and the significant appreciation of land prices. At present, communities are laying conflicting claims on acquisitions. The older generations have not passed genuine records to the younger ones. The lack of accurate data on public acquisitions; the absence of appropriate responses from government to the threats from communities; the aggressive dispossession and imposition of levies by communities on private individuals; and difficulties in authenticating traditional titles to land, are some of the key factors at the heart of the land conflicts in Port Harcourt.

An underlying factor of the land struggles in Port Harcourt is economic. Presently, the original land owners have lost their farmlands and nothing is put in place to provide alternative forms of livelihood. As all acquisitions are not only outright, and the payments (or compensations) are on a once-and-for-all basis, the original owners want to get their land back by all means. Thus as land is a finite resource, the struggle for urban land is aggravated by the scarcity of land. The land owners are also now very much aware of the potential value of land and they feel that they have been wrongly dispossessed of their land. At the same time, the problem of gross unemployment, especially among able-bodied and educated youths, is very important. These are ready recruits for violent activities especially those emanating from conflict situations arising from land struggles.

As most of the public acquisitions are unclear (especially as most documents were destroyed during the civil war 1967–1969), conflicting claims abound in most cases. This is coupled with the fact that landowners had not acquired formal British education, and most of their history and transactions were oral and often not accurate over time and most times not tenable in a court of law. According to one of our respondents, the original struggle started around 1948–1957, when the Diobu people of Port Harcourt brought a case against the British Government on the ownership of Port Harcourt. The then British Colonial Government claimed ownership of about 40 kilometre radius of Port Harcourt. The natives disputed this claim arguing that the land given to the Crown by their forebears was much less than this (about 20 kilometre radius). However, there were no documents to support their claim. Although they went to court, first in Nigeria, second, to the West African Court, and finally the Privy Court in England, the community lost the case and the acquisition of 99 years lease still stands.

When government acquires land, promises are made to the communities that are never fulfilled. Most times, jobs are promised especially for the youths in the proposed development. These jobs never materialise. Most important, land is acquired for 'public use' but these terms are changed along the line and the land

is converted to other uses that are not for the public, but benefit individuals other than original owners. These make the communities feel cheated and when they have had the resources, they have gone to court for redress. In most cases, when they are able to retrieve some of the land, they quickly sell it off to avoid re-acquisition by government agencies. Of course, the resources made from the sales are not enough to be meaningful to everyone in the communities. Thus the struggle continues.

Authentic title to land is another basis for struggle between landowning families in communities. Most times the elders sell the land without the proceeds benefiting others in the communities, e.g. the youths. Especially between groups of families, a family may decide to sell land without the consent of the other families. This most times leads to violence.

Of note is the fact that government acquisitions are often too extensive when compared with the need for which they have been acquired. The land is often left fallow for extended periods while the landowning families have no more land to farm. This action frustrates the people and most times they encroach on the land, often leading to conflicts between youths in the communities and law enforcement agents.

A phenomenon that is occurring presently is the struggle between the natives and private buyers. When a private developer decides to renovate an existing property on native land, they confront him (or her), asking for huge amounts of money, locally called 'development levy'. This is usually enforced by community youths who are very aggressive in their approach and are ready to destroy whatever is being built, sometimes attacking the workers in ways that can result in death. Most times, private entrepreneurs are ready to negotiate peaceful solutions with them instead of seeking solutions in the court as that is not only expensive, but also takes a lot of time.

A big problem stems from the inability of government to protect its allottees from local land owners who disregard the Certificate of Offer issued by government (see Box 1 for the case of two owners of a plot). One of them was allotted the plot by the government and the other bought it from the community. Another example is the case of an allocation of land in Eagle Island, a residential island in Port Harcourt. At the time this area was allocated; there was no access and no essential services on the island for a long time. Thus, the allottees could not develop their plots. This questions the feasibility of the length of time required by law for an allocated land to be developed by the recipient (i.e. two years). The argument is that this period is unrealistic in view of the difficulties of getting mortgage assistance from banks. Thus while the C of O remains valid, the terms of the allocation lapse. Meanwhile, the original owners invade the area, re-parcel the plots and sell to new buyers. At the same time, the government is silent about the problem (see Box 2 for a case study). Presently, the area is riddled with

conflicts and violence erupts regularly between the original owners, new buyers and those having C of Os from government.

Box 1: One plot, Two owners

During our interview³ with the State Director of Lands and his officials, a case was brought to him for settlement. Two persons were claiming the same plot of land. One had purchased it from the government and the other from the local community. The problem arose when the state government accepted the recommendations of the Graham Douglas Committee it set up in 1999 to review Sales and Allocation of Government Properties between 1994 and 1998. The two main recommendations of the committee were: a) C of Os issued between 1994 and 1998 should be cancelled and necessary infrastructure put in place before any allocation was made; and b) government was asked to consider the interests of indigenous communities along with private bodies in the new allocation. These recommendations were accepted but there is no evidence that C of Os were cancelled. The communities on their part reacted by selling the land to new individuals after waiting for government action for a long time. However, the cancellation of the C of O does not mean that the land has been handed over to the original owners. Just as acquisition is a process, de-acquisition is a process also. This was the conflict he was trying to mediate. Finally, he was not able to resolve it and there were to the parties involved to exercise restraint and continue with dialogue with the aim of resolving the conflict.

Of note is the fact that existing land control mechanisms are weak as the enforcement agency is not empowered to effect adherence to laws. Political interests do not allow the officers to effect control measures. For example, local boys (who are mostly unemployed) are mobilised to scout for land for politicians that have the ill-gotten resources to buy. The land use act that is the basic tool for controlling the use of urban land does not have supporting laws and relevant regulations to help implement it.

Even when legislation is proposed (e.g. a proposed bill on property tax), the professionals in the Ministry of Lands are not involved in drafting the provisions of the bill). The visible executive lawlessness by government officials and other policy makers showed that, most times, they only tackle the problems that affect their interest. Thus, when those who are responsible for preparing legislation are the very people that break the law, the available laws are subject to abuse.

Box 2: My ordeal at Eagle Island

I was allocated a piece of land at Eagle Island about 20 years ago when I was a senior civil servant. The land was accompanied by the C of O signed by the governor. However, although we were asked to develop the land, there was no road access to the land. The access bridge was constructed about 2000. I did not have the resources to erect a residential building for my family and it was not possible to get a mortgage loan from the banks. Meanwhile, I have been paying my yearly tenancy rate as the lease is for 99 years. In 2003, at the age of 62 years, I retired as the director of my department. Since the access bridge had been made, I went to inspect the site and decided to at least erect the perimeter fence for my plot of land. As my labourers were clearing the bush in readiness for fencing, a group of young men from the community disrupted the work and drove them away. On enquiry, I was directed to the youth leader. He informed me that they had taken back their land and introduced me to the 2 young men that my plot was allocated to. The young men informed me that they had already sold off their portions to 2 different individuals and as far as they were concerned that was the end of the story. At present I am helpless. There is no-one to go to for redress. The police refused to be involved. It is very expensive to go to court. The case can take up to 15 years before one can get judgement. I do not have that sort of money or time.

Community-Government Relations

The relationship between government and communities where struggles over land have occurred has been marred by threats, aggression and litigation. Communities take legal and illegal actions against government. Some illegal actions include forcefully taking possession of undeveloped public lands, and selling them off to private buyers. Allottees have had to renegotiate their allocations, this time with the community directly, or risk losing their land. However, government is 'silent' over many incidents of re-possession of public land by communities. This trend also has some interesting dimensions. Sometimes government fails to dialogue with land owners and allows the aggressive re-possession to continue or even allows legal action taken by communities against it to proceed as a political instrument of 'vote catching' in elections. In other situations, holders of political offices use their newly acquired wealth to buy such re-possessioned land.

In 2002, the government of Rivers State set up a Special Committee to examine reported cases of discontent with respect to public lands allocation. The committee made several recommendations which in some cases such as Eagle Island, was to cancel all C of Os issued on the land. The government's White Paper accepted this recommendation but up till now no formal notice of

cancellation of leases has been made. Meanwhile, the Oroworukwo Community that has the land has sold off almost all the plots to other individuals. Even if the original allottees were aware of this development and decided to sell off the land, the new buyers would have to settle the local communities. The Lands officers interviewed argued that the cancellation of leases did not amount to giving back the land to the original owners. What it did was to allow government to put the land to the use for which it was initially acquired. In almost every case of acquisition reviewed, government had contravened the purpose of the acquisition. For example, in the recent case of government acquisition of land for the RIVGAS project in Port Harcourt, the laid down procedure for land acquisition was not followed. An influential politician belonging to the party in power from the community was simply given money to settle some people in the community to facilitate the acquisition. This is also one way in which records on compensation payments are lost. Government has also failed in specific cases to follow its own laid-down procedure for land acquisition. It has circumvented the process of acquisition and used political patronage networks. The documentation in such cases, especially on the amount of compensation paid and who received the payments, has been poor.

Generally, government is silent on the struggles over land. From the late 1980s, land administrators in government had a soft spot for those who 'invaded' government-acquired land. This trend has been attributed to the 'double dealing' on the part of government functionaries, especially as undeveloped land has become much more limited and its value has gone up. At the same time, the environment has become militarised in the last seven years, to the extent that it is difficult for government officials to take purposeful decisions. Land struggles have become more large-scale, aggressive and violent under the democratic dispensation than under the military. The military regimes had the use of brute force under state power and so communities were wary of their acts. However, court actions against governments were taken even during military administrations.

For the two ethnic groups (the Ikwerre and Okrika) that claim ownership of land in Port Harcourt, it has been violent clashes and countless court actions. Successive state governments have failed to settle the disputed claims. However, the actions of one group – the Okrika people – in forcefully taking possession of land, reclaimed by government is said to have aggravated the struggle between government and communities over land in recent times.

Land struggles and conflict also occur between communities within the same ethnic group, and also between families in a specific community. Such struggles are marked by violence, often leading to physical injuries and even deaths. The conflict arises over boundaries and sale of land. Ancient boundaries are disputed between communities and families. Within families, some individuals may want to sell, or actually sell, without the knowledge or agreement of other

family members. A buyer who gets caught in these webs of deceit can end up paying more than once for the same piece of land. Sometimes land owners sell the same piece of land to more than one buyer and this causes litigation between the different buyers. A case involving land struggle between the Aguma and Woluchem families was cited by one of our respondents. Respondent attested to the fact that families visited several ancestral shrines in a bid to authenticate ownership. Finally, the case was resolved by recourse to oral tradition.²

Land officers blamed the problem on the buyers, who in the process of acquiring land do not make the necessary enquiries at the State Ministry of Lands. The buyers have, however, countered this, arguing that they were not aware of where to make enquiries officially or even scouting for information in the communities. In addition, the process takes a long time and by the time they conclude making enquiries, the land will have been sold to another buyer. What is needed therefore are quick, efficient and accessible information processes.

The Impacts of land struggles

A major impact of the struggles over land between land owners and other stakeholders – including government, government allottees and private buyers; and even between land owners – is that it limits the ability to acquire land for public use. Respondents were unanimous in their opinion that the land scarcity and acute pressure on available land in the Port Harcourt metropolitan region, especially for public purposes, can be traced to land struggles and resulting conflict. Land owners are very suspicious of government intentions to take over their land in new acquisitions. Land owners are also reluctant to be governed by the provisions of the Land Use Act in terms of compensation payments.

A respondent stated that the Rebisi people, who are the original owners of Port Harcourt, were being paid five hundred pounds per annum as agreed at that time (around 1948). Other cases cited include the Government Residential Area Phase Four where government never fully paid compensation. This claim was however disputed by Lands Officers in the Rivers State Ministry of Housing and Urban Development who claim that the State, in a more recent development, is the only one in the country that pay compensation at the open market value of land and negotiation is done on a plot-by-plot basis and not on economic crops alone. However, a new dimension to compensation was raised by other professionals in local government and in private practice. Many of them stated that when government negotiates land acquisition, it makes promises which it does not fulfil.

Box 3: Changes of Use and Privatisation of Publicly Acquired Lands**i) The Isiokpo Acquisition**

The Rivers State Government acquired land in 1979 at Isiokpo (about 45 kilometres from Port Harcourt, the State Capital) during the civilian regime of Alhaji Shagari from 1979 to 1983. The Federal Government acquired large hectares of land across the Rivers State for the development of low-cost housing. Celebrating its first one hundred days in office, the government built some three-bedroom flats on the land at Isiokpo. One of the communities that gave land for the housing development claimed that the houses built were allocated to persons belonging to the ruling political party. The local community owning the land petitioned government, and there was no response. The community then sold off all undeveloped plots to private buyers. To date, government is silent on this.

ii) The Rumuokwuta Girls Secondary School Acquisition

Land was acquired for the Rumuokwuta Girls Secondary School in Port Harcourt in excess of the amount needed. During one of the Military regimes, a civilian Permanent Secretary balkanised part of the unused acquisition and allocated the new portions to private individuals. The original land owners resisted this move. Government issued threats but the land owners went to court and won the case against government. Part of the land was given to them which they quickly sub-divided and sold off.

iii. Eagle Island Acquisition for Technical College

Land was acquired by the then Eastern Nigerian government in Eagle Island in Port Harcourt (before the Nigerian Civil War) for a technical college. Part of this land was subsequently allocated to an oil company and part to private developers. The Nkpolu - Oroworukwo community which originally owned the land has moved in to repossess all such allocations not yet developed. Even developed plots are not exempted as the owners are required to pay various levies to the community. In many cases, the land was simply sold off by the natives to new sets of buyers while those with C of Os were helpless. Meanwhile, as already discussed, the responsible government agency did not come to their rescue.

Land acquisition for private use has also become difficult. It is not only expensive but the process is not entirely free from deceit. Land owners have often sold to more than one buyer and subjected these individuals to legal battles. Land initially acquired by government, but left fallow for some time, has been carved into smaller lots without following due process as occurred in Amadi-flats and the Old Government Residential Areas (GRAs) by unscrupulous government officials. These plots have been aggressively repossessed by local land owners. Even where

the land was negotiated and bought directly by private buyers, persons from the communities under different guises have imposed different levies – payments for title holders (OWHOR), local development levies and many other different fees. This has the impact of escalating the cost of land for development.

The impact of land struggles on use of land is multi-faceted. In the first instance it promotes unapproved change of use and makes existing zoning regulations meaningless. Land acquired for public use, perhaps for a school, is privatised and used for private residential development without approval by the appropriate authorities. Secondly, it also promotes the intensification of land development. As plots move from public to private ownership, individual developers often exceed the density of development initially permitted in the area. The objective of private developers is to maximize the use of space available. Thirdly, in order to secure their interests, developers construct high fences around their properties giving a very unaesthetic appearance to such developments. Fourthly, new developments often do not comply with planning standards in terms of access to plots and space standards. Sometimes even the planned access is sold off for development. Such developments are often also sub-standard, having been hurriedly constructed and not monitored by appropriate government agencies.

The initial form of struggle was in agitations that culminated in legal action. This proved to be a long drawn-out and expensive process. With increased awareness of struggles in the global arena, more aggressive postures have been taken and sometimes this has resulted in violence, injury and damage to property. The various youth groups in the indigenous urban communities are responsible for the escalation of the struggle. While the study could not identify a well organized structure for the struggle, it established the existence of a network of support comprising elders, professionals including those in the built environment profession, government officials, politicians, lawyers and law enforcement agents who belong to these communities. It is this realisation that has caused the state government to ignore the plight of allottees, pretend that it is unaware of these struggles and in some cases, benefit from the chaos.

There are several impacts of land struggles on physical development. Outside of government layouts, most of the areas of private acquisitions in Port Harcourt are without formal planning. Local communities anxious to sell off their land rather than have government acquire it, sell it without survey or layout plans. Sometimes even the road access is sold to appease family members who feel aggrieved by the way the land is shared. The result is unplanned development of most of Port Harcourt Metropolis. Most developments are in contravention of basic planning standards such as plot coverage and setbacks. In the new development areas, especially on the urban periphery, houses are built before even access to them is thought of. No provision is made for utility lines and, most times, waste water from homes is discharged through holes bored in the fences on

to the road. Spaces are not provided for public uses such as markets, play areas for children or open areas. Moreover, in the absence of development control measures, building densities are very high. Even the activities of the planning office have been overshadowed by corrupt practices. Once in a while, the Ministry of Lands officials go on demolition exercises of illegal structures and those contravening building standards. However, as these exercises are not sustained, everyone reverts to the status quo immediately after them.

Conclusions and Recommendations

In summary, the study has raised the question of urban land policy and its relevance at the local level. The main argument is that the transfer of interest in land from indigenous communities to the state and private individuals is at the heart of the land struggles and emerging arenas of conflict over urban land in Nigeria. Land struggles in Port Harcourt are largely economic. This study has documented the types of struggles between different stakeholders in the urban area. The study has also highlighted key issues arising from our understanding of citizenship and its implications for land ownership and control. The failure of the Land Use Act as a tool for urban land management has also been discussed.

One of the issues that came out of this study is the paradox of the benefit of sale of land by the indigenous owners and that of the land buyer – be it compensation by government or outright purchase by a private entrepreneur. Presently, there is a need for government to compensate the indigenous communities for compulsorily acquiring their land without thinking about their future. The type of compensation being recommended is not a one-time affair but a sustainable payment. In allowing their land to be compulsorily acquired or selling outright, the original owners lose their land forever while the new owners get not only life-time value but value in perpetuity.

There is a need for government to explore the possibility of compensating communities effectively for life. Different forms of leasehold must be explored. At the same time, the communities must benefit from economic projects on their land. This suggestion must be part of the sale terms for purchase and sale of indigenous land in Port Harcourt and, maybe, other urban areas in Nigeria. The rationale is that the time has come for communities to benefit directly from proceeds emanating from their land instead of the existing procedure where companies pay to the state and (or) local government that are expected to solve social problems in their regions. However, this policy has never been effective as the proceeds have never filtered down effectively to the communities concerned.

Most importantly the current application of the concept of ‘public interest’ must be re-defined to mean exactly what it states in the statutes. Government must pay the market value for any acquisition, be it from indigenous communities or from secondary owners. ‘Public goods’ belong to everyone and everyone must pay

for them. Over the years, a lot of injustice has been carried out by government using the guise of public interest to dispossess indigenous communities of land that is their only source of livelihood without providing alternative sources. If after acquisition, the land is sub-divided for allocation to private individuals, the indigenous communities must be given a percentage of the allocation for their use. Cross-subsidisation must be part of the sale procedure; and all sales to private individuals must be economic. In the case of the indigenous communities, it is their right to be advised on improving their livelihoods or pursuing alternative livelihood chances arising from the negative aspects of acquisition.

There is also need to consciously make land law relevant in Nigeria. Studies of land laws in Nigeria have recognised that vesting all land in the states in the hands of the governors has not worked.

However, there is need to free land for development, both by government and private individuals. To free land for development in a sustainable sense, different forms of strategies must be explored, experimented with and used regularly by the lands officers with the active involvement of the populace. These strategies (e.g. land pooling, land exchange, guided land development etc) must be utilised especially in the communities at the urban fringes so that the mistakes of the past will not be repeated. This is critical because as land for physical development gets scarcer, so will the struggles over land become more intense.

Successive political administrations in Rivers State, Nigeria, must share the responsibility for allowing this state of affairs whereby conflict has become the hallmark of land for physical development in Port Harcourt. It is obvious that government has substantial land holdings in the Port Harcourt Metropolis. The disposal of such holdings has always favoured people in government, those with political clout and their friends and relatives. Public land has been used as tool for political patronage to the dissatisfaction of the original owners of the land. At the same time, promises made to indigenous communities when acquiring the land were never fulfilled, which created feelings of failure to identify with the people. Private developers have also had their struggles with local land-owning communities. In this case, struggles over land occur as a means by local youths of making an income from the same land their elders have already disposed of.

Notes

1. As conceived by law, land includes the surface of the earth, the subsoil and the air space above it, as well as all things that are permanently attached to the soil. It also includes streams and ponds (Olawoye, 1974: 9).
2. Naira is the local Nigerian currency. Presently, US \$1 is equivalent to 145 naira in the open market. Also, all the acquired lands in the Government Residential Area have been allocated to private developers.
2. Personal Interview with key Informant, 11 June 2006.

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Appendices

Appendix 1

Table 1: Compulsory Acquisition of land by Government in Port Harcourt and its Environs 1971 to 2006

S/ No	Location	Size (hectares)	Purpose of acquisition	Gazette details	Governor	Remarks
1.	Rumukro-she/Atali/ Eneka Rumuewhara, Igbo-Etche	417.37	Satellite Town Scheme	No.6 Vol.26 of 10/03/94	Lt. Col. Komo	Did not materialize, land is left fallow
2.	Along Rumukwursi/ Igbo Etche Road	400	Developmt. of low density housing	No.8 Vol. 24 of 19/03/94	Chief. R. Ada George	Construction of Building abandoned
3.	Oyigbo	4997 m ²	For use by the Rivers State Government	No. 17 Vol. 20 of 10/11/88	Col. Tony Ukpo	Abandoned and encroached upon by natives
4.	Choba	36.52	For use by the Rivers State Government	No. 17 Vol. 20 of 10/11/88	Col. Tony Ukpo	Site is already used for development
5.	Oyigbo	223.30	For use by the Rivers State Government	No. 17 Vol. 20 of 10/11/88	Col. Tony Ukpo	Site fallow and encroachment is reducing size
6.	Eneka/ Rukpoku	24.27	For use by the Rivers State Government	No. 17 Vol. 20 of 10/11/88	Col. Tony Ukpo	Abandoned and encroached upon by natives
7.	Oyigbo	0.90	For use by the Rivers State Government	No. 7 Vol. 19 of 20/02/87	Col. Tony Ukpo	School to land farm, later converted to housing projects,

8.	Oyigbo	4996 m ²	For use by the Rivers State Government	No. 24 Vol. 19 of 20/02/87	Col. Tony Ukpo	The Governor decides who gets the units after construction
9.	Rumudomaya Obio	12.85	For use by the Rivers State Government	No. 2 Vol. 17 of 10/01/85	Col. Tony Ukpo	Used for State Agric. Farm. Minimal activity presently
10.	Rumukwuru-shi/ Elenwo	32.56	For use by the Rivers State Government	No. 22 Vol. 13 of 09/07/81	Chief Melford Okilo	Presently used as cattle market, some encroachment by entrepreneurs
11.	Rumuolumeni	377.10	For use by the Rivers State Government	No. 22 Vol. 13 of 09/07/81	Chief Melford Okilo	Presently used as College of Education
12.	Ahiamakara, Elekohia, Diobu	14.4	For use by the Rivers State Government	No.3 Vol. 6 of 17/01/74	Lt. Com. A. P. Diete-Spiff	Site is already used by government
13.	Rumukalagbor, Elekahia	761.2	For use by the Rivers State Government	No.3 Vol. 6 of 17/01/74	Lt. Com. A. P. Diete-Spiff	Left fallow and currently being used by squatters
14.	Rumukalagbor, Elekahia Rumuomasi	692.4	For use by the Rivers State Government	No. 51, Vol.6 of 12/12/74	Lt. Com. A. P. Diete-Spiff	Left fallow and sold by indigenes to private developers
15.	Along Ikwerre Road, Mile 3 Diobu	16.3	For use by the Rivers State Government	No. 51, Vol.6 of 12/12/74	Lt. Com. A. P. Diete-Spiff	Ultra modern market-already in use
16.	Rumuokwuta	141	For use by the Rivers State Government	No.18 Vol.4 of 03/04/72	Lt. Com. A. P. Diete-Spiff	Girls Secondary School-already in use
17.	Elimgbu/ Oroigwe	20.7	For use by the Rivers State Government	No.9 Vol.4 of 04/02/72	Lt. Com. A. P. Diete-Spiff	Ministry of Agric farm and housing for staff-now squatters

18.	Nkpolu - Orowo-rukwo	257.82	For use by the Rivers State Government	No.33 Vol.3 of 07/10/71	Lt. Com. A. P. Di-ete-Spiff	University of Science and Technology – already in use
19.	Along Olu – Obasanjo Road	3.38	For use by the Rivers State Government	No.33 Vol.3 of 07/10/71	Lt. Com. A. P. Di-ete-Spiff	Head office of the Rivers State Transport Company
20.	Aluu	3791.34	For use by the Federal Government	No.42 Vol.8 of 28/10/76	Lt. Col Z. Lekwot	Head office of the Rivers State Transport Company

Source: Compiled by: 1) Ministry of Lands, 2005

2) Field work, 2006

Note: Acquisitions listed are those for which the Directorate of Lands in Rivers State has available data.

Table 2: Acquisition of Land by Rivers State Government (RVSG) under Public Lands Acquisitions Law, CAP 105

S/ No	Location	Purpose of Acquisition	Area (hectares)	Compensation (Naira)	Remarks
1.	Diobu, Port Harcourt	College of Science and Technology	257.82	567,200	Already in use as Univ. of Sc & Technology
2.	Diobu, Port Harcourt	High frequency link, Post and Telegraphs	3.80	8,353	Project completed & in use
3.	Oromer-izingbu, Diobu, Port Harcourt	Military Governor's Office	9.8	21,560	The project did not materialize
4.	Diobu, GRA Phase2 Extension	Residential Development and Offices	55.15	40,158	Parcelled out and allocated to high income at paltry prices
5.	Orogbum – Poly Clinic	Hospital	5.11	11,250	Project started and abandoned along the line
6.	Amaigbo Road-Diobu	National Library Board	1.56	3,440	Space used for private development

7.	Amaigbo Road-Diobu	R. S. Transport Corporation: Office/Workshop	3.38	7,399	Project materialized and in use
8.	Oroworuko Diobu	Transmitting Station	14.35	30,000	Land Vacant
9.	Diobu, GRA Phase 3	Residential Development	239.93	513,500	Parcelled out for high income at paltry prices
10.	Orominike Diobu	Children and Maternity Hospital	4.65	10,230	Project started and abandoned
11.	Diobu - Port Harcourt	Housing Development at Eagle Island	93.02	250,000	Partly occupied, invaded by natives

Source: Rivers State Ministry of Lands, 2006

Appendix 2

Figure 1: Administrative Map of Port Harcourt Metropolis



Figure 2: Spatial Growth of Port Harcourt in 1986



Figure 3: Land Acquisition in Port Harcourt Metropolis

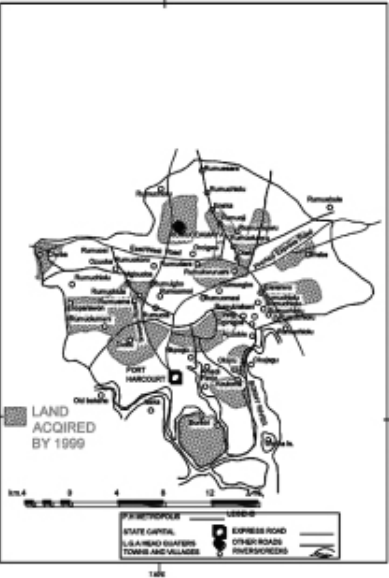


Figure 4: Area Acquired in Port Harcourt Core by 1994



Gender and Land Dynamics in the Gambia: The Struggle for Citizenship and Democracy

Isatou Touray

Introduction

The changing political economy of land in the current context of global development discourses of globalisation, market liberalisation, growing biotechnological innovations in agriculture has given prominence to relationship between land control and gender struggles. Land in Africa still remains a main source of capital upon which the social capital in the rural and urban areas and development are based. Land is a strategic resource for agricultural production, provides co-lateral to private entrepreneurs, and underlies the tourism industry in the Gambia. It is also a form of financial and social capital that vests power and authority in some communities to the exclusion of others.

While there are studies pointing to the diminishing emphasis on agriculture by the peasantry (e.g. Bryceson 2000), the evidence shows that agriculture still remains the mainstay of many African countries and will remain so for a very long time. The agrarian crisis in many African economies is considered to arise from weakness in the land tenure system and land reform policies. Current poverty reduction initiatives suggest that land remains a critical resource for both rural and urban people, whose main source of livelihood is agriculture.

The last three decades have witnessed various land reform initiatives on the African continent, with most countries moving towards the privatisation of land and the expansion of various land uses under private control, leading to the marginalisation of the traditional land tenure systems.

Until recently, land debates in Africa viewed customary tenure as an impediment to growth and a major obstacle to realizing production goals. Colonial and post-independent governments promoted land tenure reform on the basis of individual ownership in African-held land (Basset 1993:12). Subsequently, land reforms became embedded in modernising discourses about agricultural intensification and economic growth, again emphasising individualised land tenure systems. However, various studies have shown that such land reform policies were historically linked to particular colonial concerns and conceptualisations, and were not necessarily grounded in local realities. Chanock, in an account of the development of colonial property law in Africa, argues that from early on, British colonial administrators developed a common framework for understanding tenurial systems that dominated the colonial period (Chanock 1991a, 73:70-71). Similarly, Basset argues that early British colonialists used this idea of the communal nature of the African land tenure to gain ultimate control over land, establishing the legal rights to alienate land by creating Crown land and by declaring that 'vacant' lands belonged to the state (Basset 1993:70).

This approach to land reform often implied the abrogation of existing rights and the loss of property rights for some rural people and the citizenry. This challenged the economic and social hierarchies bound up with existing tenure systems and therefore aroused political sensitivities and conflicts. Furthermore, the discourse misrepresented the nature and capacities of existing African tenure systems. Customary forms of tenure have been found to exist in many different forms in Africa, with a variety of implications for issues of resource management and investment. It has been argued that the growth of land markets has not and does not require formalised property rights, while studies have documented the existence of multiple, though often limited, forms of local land markets (Reyna 1987; Shipton 1988; Bruce and Migot-Adholla 1994; Heck 1996; Platteau 1996; Toulmin and Quan 2003a). Informal transactions can include a wide variety of loans, leases, sharecropping contracts, exchanges and pledges; while in some places, forms of sale take place in the absence of registered title (Bosworth 1995). These tenure characteristics are also evident in the ways people in Gambia access land.

In contrast, reforms during and since the colonial period attempted to impose western property categories of freehold and leasehold, along with formal legal pluralism, with customary and statutory law established, and the constructed two separate systems, which influenced the status of landholding. Thus recent studies have shown that the majority of West African countries currently exhibit two broad systems of land tenure and resource access: on one hand, customary land tenure systems, and on the other formal, statutory systems. In most of rural West Africa, including the Gambia, farmers, herders, forest users, fishing folk and others gain access to land and resources on the basis of customary rights. For most, access to and control over land and resources derives from their membership in some kind of community, usually defined in terms of kinship, or, in the case of secondary or derived rights, through arrangements with those who hold primary rights (IIED 1999:7).

This model of tenure reform, strongly influenced as it is by the World Bank and IMF paradigm of economic development based on economic liberalisation and privatisation, has been subjected to a variety of critiques. For example, in the early 1990s, new studies funded by the World Bank were undertaken on the supposed link between the security of freehold tenure and improved agricultural productivity (Bruce and Migot-Adholla 1994). Kenya was among the countries studied and findings there showed that registered individual title did not bring the predicted economic benefits.

The gender implications of such land titling policies have been a subject of vibrant debate. Some argue that top-down reform and land titling, enforced by strong government commitment, is necessary to overcome deep-seated gender inequities in customary arrangements and to give women better land rights and secure their access to land (Blackden and Bhanu 1999). Land titling is also seen as a route to achieve synergies between outcomes for women, poverty reduction and overall economic growth (Blackden and Morris-Hughes 1993).

These land reforms have had negative gendered impacts, as we explore here in the Gambian case. Indeed, gendered access to and control of land and associated resources is critical to agrarian development and poverty eradication. Women's livelihood strategies are inextricably linked to the land question, particularly in the rural economy.

This chapter examines the nature of land tenure policy reforms since the 1990s, gendered access to land, and assesses their impact on the political economy of the Gambia. It focuses in particular on those areas currently faced with conflicts over land resources, and investigates resistances to the reforms, and their gendered character. Both qualitative and quantitative methods were used to collect data, using an analytical approach grounded in feminist research methodologies. The research problematises the emerging land questions and relationships in terms of global, national and local processes of the land reform, while focusing attention on the local and gender-differentiated impact of land reform policies. Gendered access to and control of resources are investigated through the multiple institutions which different women and men draw upon, and the power relations which shape struggles for land. The study utilises the voices and experiences of the affected people, in order to rethink land reform policies.

Gambia Land Question in Historical Perspective

Gambian Land History and the Socio-economic Context

In the Gambia, land access, control and use are deeply embedded in the history and cultural practices, and in ongoing social relations amongst descent groups, households and their members. Land has long been the basis of political power and status defining people's social positions. Land resource is critical as a basis

for livelihoods in both the rural and urban areas, and also important for the new economic opportunities which have arisen through Gambia's tourist trade. Land is associated with a range of soil, plant and other resources which women and men value and use in different ways. However, land is also pivotal in Gambia's current environment and development policies and plans. In particular, the State Land Act of 1990, which dovetails with the current Gambia Environmental Action Plan and with Gambia's tourism development policy, aims to remove land from customary tenure into state control from where it can be 'rationally' redistributed to meet environment and development aims.

In parallel with environmental policies, the Gambia has been vigorously pursuing programmes of socio-economic development based on macro-economic reform, private sector development and poverty alleviation. These claim to address the depressed economic situation, while also taking aboard environmental issues. In particular, under the First Republic, in 1990, the Gambia introduced a 10-year Programme for Sustained Development (PSD). This programme is designed 'to achieve a long-run expansion of the productive capacity of the economy that will support improvement in the living standards of the Gambian population' (The Republic of the Gambia 2005:1).

Similarly, in the Second Republic, *Vision 2020*, the concept of 'The Gambia, Inc.' was introduced. This document emphasises private sector development, particularly based on the entrepreneurship of the 'private individual'. Within this policy document the government also claims to address environment and natural resource issues. It emphasises:

Setting out a goal to conserve and promote the rational use of the nation's natural resources and environment for the benefit of the present and future generation in a manner that is consistent with the overall goal of sustainable development (The Republic of the Gambia 1996:14).

However, I argue that *Vision 2020* is primarily aimed at developing and promoting a fully-fledged private sector-led form of economic development. Its main emphasis is on development of the private individual to take on entrepreneurial activities geared towards the international market. Tourism is a key activity in this respect, and *Vision 2020* is mutually supportive of the Gambia's Tourism Development Policy which is found in the assumption that the private sector will provide financial support to achieve the goal of sustainable development, and in the view that privatisation will achieve more rational (and hence, it is supposed, sustainable) use of resources.

It is in this regard that the policy framework has specific implications for the control of land. *Vision 2020* observed that the existing communal system of land tenure does not favour the use of land for commercial ventures, and that it tends to encourage over-use of resources. It also argued that communal tenure constrains access and legal title to land by women, who constitute the

bulk of the labour force in agriculture and the informal sector. Similarly, the Strategy for Poverty Alleviation (Government of the Gambia 1994), the Gambia's blueprint for the alleviation of poverty, emphasised centralised control of land resources, arguing that government control of land was a critical requirement for development projects. The report noted that this was to avert the possible over-utilisation of natural resources under communal systems. These policy perspectives on development and environment are thus strongly in line with, and mutually supportive of, the State Land Act of 1990 and its empowerment of government institutions to take control of land in order to reallocate it in more 'rational' ways. However, with state control over land resources, it becomes problematic for the poor to access and control such resources; as with regard to land, the extent to which apparently pro-poor policies address the concerns of the rural poor is questionable.

Land Tenure, Access and Gender Relation (Pre-1992)

Access to land resources is mediated by institutions, which creates different opportunities and constraints for women and men. These in turn shape gendered positions in the various conflicts and tensions which now arise over land resources. These intersect with other aspects of gender relations to shape actual practices and outcomes around land control.

In the Gambia six main sets of institutional arrangements structure access to and control over land resources: kabilo land holding; individual 'first clearance'; group project holding; communal ownership; Islamic tenure, and leasehold. Each of these has particular gendered implications, enabling and constraining options for various actors in the community.

While institutions may claim principles and rules governing land access, the day-to-day application of these rules in practice is often very different. Some people are able to manipulate rules to their advantage. Furthermore, where overlapping institutional arrangements apply to the same piece of land and where there is competition for land resources, people's abilities to stake their claims depends on other aspects of their power and status. A number of cases illustrate these land-control negotiations and conflicts in practice, and their implications for women. Women's actual access to land resources in Gambia is shown to depend on the position they have in conjugal relationships, their status as individuals, and the broader context.

'Kumba noted that when the family land was going to be shared for fear of losing it to the state she showed interest. Her brother Bunja told him [sic] that women are not part of the deal to control land and moreover she is married to another family'

Under customary tenure, land is largely perceived as a 'male asset', justifying the vesting of ownership and control on men. In turn, women have to negotiate

with the custodians and the institutions that mediate access to land resources. These negotiations increasingly involve competition for the limited arable land available.

There are constant pressures to access free labour from women in household production. While the principles governing access and control of land by women, whether in customary or statutory law may provide them with an opportunity to realise their economic and financial obligations, access by women to land is actually complex and ambivalent. Moreover, women are increasingly becoming household heads in their own right as a result of death, divorce or their own choice, in the context of changing family structures. As a result of such circumstances, women find themselves seeking ways to support their semi-autonomous hearth-holds. Thus, access to and control over strategic resources such as land is important for them.

Whereas, in the Gambia land scarcity is not a key problem and most land-owning families have access to certain a quantity of land, landless families exist. They gain access to land through various land-lending and sharing arrangements based on agreements between them and land-owners, depending on the dynamics of their relationships. Patrimonial control over land has resulted in male strangers having more privilege in access to land than women from land-owning households.

The Gambia's (1990s) Land Reforms and Contemporary Land Question

The Land Reform Policy of The Gambia, beginning with the State Lands Act of 1992 converted all land in growth centres from the 'traditional' tenure system and designated it as state land. As a result, a large expanse of land on the coastal fringes of Western Gambia which was farmland was converted into development estates and housing schemes by the government of the Gambia. The BRUSUBI Housing estate was intended to make land accessible to the middle and low-income earners to have decent and affordable living conditions. However, the emphasis of land allocation seems to be responding to the demands of the middle class and relatively rich private entrepreneurs. The next section summarises the land policy.

The Land Policy

Provisions of the State Land Act 1990

The State Land Act 1990 empowers the state government to control land in the capital and all the growth areas outside Banjul and Greater Banjul. The Act states that:

All land in Banjul and Kombo Saint Mary, excluding such land as is held in fee simple and subject to any grant which has been or may hereafter be made, shall vest in the state absolutely (The Government of the Gambia State Land Act 1990:2).

According to the Act all land in the divisional headquarters and the major towns will be administered and controlled by the state. It also implies that allocation and administration of land for both private and public use will be administered by the state government. To that effect, the role and functions of traditional custodians over such resources will be diminished. This was ensured by a provision enacting an administrative board whose functions have overtaken the role and responsibilities of the traditional custodians of land and its administration. Thus:

Whenever a Land Administration Board is established under section (8) of the Act, any district authority of the area for which such Board is established, shall be regarded as a sub-committee of the Board (The Government of the Gambia State Land Act 1990:10).

The Act further stipulates the functions of the sub-committee: to (a) advise and assist in exercise of its function under section 9 of this Act; and (b) perform such other functions as the Board may request (The Government of the Gambia State Land Act 1990:10: 2 (a) and 2 (b)). The Act also implies that the Minister will be represented by the Land Administration Board instead of the traditional custodians of land. In effect, the power of the chief and his council of elders to administer land is revoked. Specifically, the Act means that the Crown Land Act (Cap. 102) and Lands Provinces Act (Cap. 103) are replaced. These Acts, derived from the colonial period, recognised the traditional custodians of land and tenure systems that existed as long as they did not affect colonial interests. Now, power over land has reverted from the custody of the community to the state. At the same time, this creates opportunities for individuals who would normally not have access to land without going through community structures.

Going by the Act's provisions, the minister responsible for administration of land resources has absolute powers to control and decide over all designated areas. The Act is extended to the Provinces (rural growth areas) by the following provisions:

This Act shall apply to all land in Banjul and Kombo Saint Mary's and to such other areas as the Minister may, by order published in the gazette, designate... [T]he Minister may, by order published in the gazette, designate any provinces land for the purpose of the Act (The Government of the Gambia State Land Act 1990:5).

A further provision was made within the SLA which reinforces the absolute powers of the state over land resources, as follows:

Where any area is designated under sub-section (1) of this section (a) all land in such areas shall, excluding such land as is held in fee simple, vest in and administered by the state for the use and common benefit, direct or indirect of the community in which such land is situated, and (b) the Lands (Provinces) Act shall not apply in such areas (The Government of the Gambia State Land Act 1990:6).

Similarly, a bill providing for the establishment of a Commission to oversee and control land matters in the Gambia was passed or enacted by the National Assembly in September 2007. This envisages the creation of a land commission. The arguments presented by the Secretary of State for Local Government and Lands said:

due to changes in economic trends, increasing demands and pressure on the limited land resources, it became necessary to put in place policies and procedures that would ensure a more efficient and judicious land administration mechanism in the Gambia. He further noted that this law would ensure that land disputes are reduced – which are due to population growth and rapid urbanisation and land utilisation activities – necessitating new regulatory framework (FOROYAA, 17-18 September 2007, NO 109/2007).

This means that technically, people are only responsible for land on which they pay their rates or land subjected to leasehold. In areas under the jurisdiction of the SLA 1990, if any other land is to be acquired, it has to be approved and subjected to leasehold through the state. It also implies that land under traditional tenure not currently being utilised or utilised for farming can be claimed by the state for development purposes.

In the Greater Banjul Area such as the Kombo South, Kombo North and Kombo Central Regions land has been removed from customary tenure to make it available for housing estates and large-scale production of vegetables for export using women's labour.

Yet, in the Gambia customary tenure is giving way to different varieties of tenure as the legacies of colonial policies of land holding interact with new socio-political and economic imperatives. In particular, development policies which emphasise private sector development and the 'private individual', and the move towards commercialisation and urbanisation have led to the perceived need to redistribute land hitherto under customary tenure systems.

Thus the Gambia is pursuing a land reform policy which is broadly in line with what has recently been identified as a broader contemporary land reform paradigm in Africa, with three particular characteristics:

- centralised administrative control of land, founded on the principle of eminent domain, whereby all lands are ultimately vested in the state, with law being seen as universally applicable throughout the national territory;
- a predisposition towards private property through a process of registering title over land predicated upon the prior 'nationalisation' of land by government;
- co-existence in practice of formalised tenure with customary systems, resulting from the state's lack of capacity, and/or unwillingness, to actually impose administrative control and formalised tenure regimes on rural communities (IIED1999:8).

While there is a long history of land and land tenure debates in Gambia, those of the last 15 years have been particularly strongly linked with 'sustainable development' and 'environmental' discourses. From the 1970s to the 1980s, the Gambia engaged in land reform as an instrument to address physical planning problems arising from a perceived decline in natural resources, linked to population increase. In the 1990s, this argument has been explicitly linked with the need to combat desertification. For both the First and Second Republics, however, land reform has also been widely supported as a vehicle through which the Gambia will achieve economic growth, especially through encouraging private investment and entrepreneurship linked to tourism. In the Gambian context, most land has been held under 'customary' systems which have been seen as responsible for both over-exploitation of natural resources and environmental degradation, and therefore setbacks in economic development. A further recent argument for land reform rested on the notion that customary tenure promotes gender inequalities in access to land. As a result, the State Land Act 1990 was enacted to enable the state to take control of land which was hitherto under customary tenure, and to reallocate it in more 'rational' ways.

Rationality, in the current Gambian context, is seen to lie largely in private land ownership. By implication, the Lands Acquisition Act increases the power of the government to acquire land for public purposes. The legislation explicitly states that land can be taken for environmental protection and conservation ends, such as for national parks and forest reserves (Freudenberger 2000:14). Nevertheless, as we have seen, the Gambia has embraced neo-liberal emphases on private sector development and on the 'private individual' as the main locus for entrepreneurship in tourism and agriculture, while taking on board environmental issues. To ensure efficient land allocation, the state steps in to initiate formal systems of registered individual ownership. It is assumed that this way, environmental problems will be solved and a number of economic benefits set in train, including the accelerated development of the land market, investment in land and in agriculture, reallocation to more efficient producers and ultimately greater capital accumulation and government revenue.

This approach, however, begs fundamental questions about who is going to benefit with regard to the reforms undertaken. Several observations have shown that, the State Land Act has created leeway for state actors and private individuals mainly from urban areas to conspire in claiming land previously held by rural people, and has facilitated a process of commercialisation of land resources with negative implications for access by the landless poor, women and rural women, in particular.

A case presented at the Court by Busumbala residents in the Brikama High Court on a land dispute was dismissed by the judge on grounds that they instituted the action on behalf of their families, and that their writ of summons was not in-order with order III rule 1. Over 100 hundred residents of Busumbala

were left homeless (See Busumbala land dispute case Daily Observer, Monday, 5 May 2008, ISSN: 0796-0832). Similar land cases have been reported in the daily newspapers from 2006 to date. The outcomes of such cases are still pending because of the involvement of state officials (See Jambur Land Dispute Trial, 25 March 2008, FOROYAA, ISSN: 0796-08573, Demolition Exercise leaves several people homeless).

The implementation of such reforms, particularly through the 1990 State Land Act, is having profound impacts on land access and control in communities particularly in the growth and peri-urban areas of the Gambia. Case files show problems can be discerned in the newspapers through court actions and litigations. Some cases from the main newspapers can be discerned ('District Chiefs Warned to Desist Seizing Land' (see FOROYAA, 26 February 2008), 'Half Die Residents React to GPA Vacation Notice', The POINT, page 3, 4 February 2008). The state actually alienated landowners in the community and transferred land to private individuals in the name of development.

Customary tenure arrangements are being greatly undermined by the introduction of the State Land Acts 1990 as well as other subsequent bill such as the Land Commission Bill passed in 10 September 2007 by the National Assembly, although elements persist and interact with the new tenure provisions, leading to new dynamics.

This reform led to the emergence of various groups resisting the land transfer, claiming this was a threat to their livelihood. For example, the Half Die residents reacted to the Gambia Ports Authority vacation notice which affected 36 compounds in Banjul. Similarly, communal farmlands were affected in Busumbala, Brikama, Jambur, Yundum in the Kanifing Municipality and Western Region of the Gambia. Similar pockets of resistance are encountered in the growth centres too.

In the Gambia, apprehension about the effect of the new lands act has been expressed by a joint Gambia Government-University of Wisconsin-Madison working group, which felt that it could profoundly disrupt customary land tenure arrangements, and thus contribute to considerable social and political instability. Their studies in several rural areas observed that the new acts are encouraging a sense of land insecurity, and suggest that while the land act may be appropriate for urban areas, there are major questions about its suitability for rural settings. Evidence from the daily newspapers has shown contestations over land in the urban areas between the state and the people.

Gender Perspectives on Land Reform in the Gambia

Various arguments have been invoked as a critique of the Gambian government's justification for the State Land Act. Some have argued that reforms involving titling and ownership have been negative for women, and that customary systems have

merits (World Bank Gender Division 1999:83). In the Gambia, these arguments have been made strongly by Freudenberger (2000) on the basis of evidence from case studies in Foni Jarrol, Upper Baddibu, Kiang West, Sami and Sandu districts, which have become part of political efforts to derail the implementation of the State Land Act. His work suggests that the creation of a generalised leasehold system is likely to reduce the flexibility of current customary tenure systems and threaten borrowing arrangements enjoyed by women and secondary right holders in most communities in the Gambia (Freudenberger 2000).

Between these polarised views is emerging a perspective that emphasises context-specificity, and that different mixtures of arrangements may be appropriate in different circumstances (Whitehead and Tsikata 1999; IIED 1999; Quan 2001). This implies a need to understand and recognise the different gender dynamics of the multiple institutions shaping land access and control in any particular setting, and to assess how different reform options might interact with and reshape these dynamics.

This research identified various ways through which women might gain opportunities for land ownership from ongoing reform processes, as well as how they benefit from longer-established land tenure institutions. In doing this, I examined the confrontation of land reform policy and forms of resistance, and identified whose land rights were being promoted, in the context of neoliberalism and poverty reduction strategies.

A number of existing case studies explore the dynamics of land tenure and its multiple institutions in the Gambia. These vary in their focus and detail, with some constituting short studies undertaken in a policy context (e.g. Freudenberger 2000), and others addressing land tenure in relation to other aspects of agriculture or forestry development (e.g. Schroeder 1994, 1997; Carney 1992; Dey 1992, 1985).

The women's garden in Kerewan was removed from their custody after the land owners allowed them to work on it for over 10 years. While they used the land for their vegetable gardens each allocated with 5-10 beds, they were required to water the mangoes and cashew trees for the owner. When the trees reached maturity the women were not allowed to trim the branches to allow their vegetable plot get the required sunshine and were eventually asked to leave the plot of land.

Full-length monographs on land tenure dynamics include Beedle's study of urban Bakau (1980), which examined how land tenure changes intersected with social structures, transformations in social relations, and the organisation and nature of economic activity. Similarly, Kea's study on Brikama, focussed on the intra-gender struggles that emerge between female hosts and their client strangers as they negotiate access to land resources and labour for horticultural and rice production. It also highlights the structural inequalities between hosts and clients over access and control over land resources, and the changing nature of the supply of agrarian labour in Brikama and its neighbouring satellite villages (Kea 2010).

Proponents of feminist political ecology seek to understand and interpret gendered experiences and knowledge in the context of global processes of environment and economic change (Fortmann 1988; Hoskin 1988; Rocheleau 1988; Fairhead and Leach 1996, 1998; Rocheleau et al 1996; Leach 1994). Their work adds a gender perspective to political ecology, which emphasises decision-making processes and the social, political and economic contexts that shape environmental policies and practices (Carney 1993; Peet and Watts 1993; Blaikie and Brookfield 1993; Bryant 1999). This perspective focuses attention on local and gendered experiences of globally-influenced land policies, such as how the State Land Act 1990, in the urban and growth centres of the Gambia. Evidence from the Gambia suggests that women have been systematically marginalised even though the arguments put forward were in favour of making land resources accessible to them. The evidence gathered from the focus group discussions show that women are not actors in the negotiations over land discussions at both the state and individual level.

Similarly, some women invoke Islamic law, or the *shariah*, to claim portions of land. Fatoumata informed her brothers and uncles that she wanted a piece of land from their land to build a house to enable her settle with her children whose father died leaving nothing to inherit from him. This was received with great resistance at first but accepted when she got other religious scholars intervene. She was told that women do not inherit land according to the customs but she asked if under shariah law she can inherit land.

Therefore, access to land by women is informed by various institutional norms and practices, with various implications for their livelihoods, wellbeing and self-esteem. Institutions are best understood as frameworks for socially constructed rules and norms which function to limit choice; they are 'humanly devised constraints' (North 1990:3) which reduce uncertainty and provide structure to everyday life, making certain forms of behaviour predictable and routine by institutionalising them (cited in Goetz 1997:4). According to Goetz, it is important to recognise the human dimensions in the construction of institutions and to understand that institutions embody a history of social choices by particular social groups. A critical analysis is needed to understand how they are made to preserve certain interests. Institutions are also seen as setting limits to, or boundaries around, social practice, including thought, shaping human experience and personal identity (Giddens 1996 ; Connel 1987, cited in Goetz 1997:4).

The experience of gender difference and differentiation can therefore be seen to be a product of institutions: the outcome of institutionalised patterns of distributing resources, social value, and public and private power. In the Gambia, for example, the predominant form of customary landholding, through the patrilineal descent group or *kabilo*, is patrimonial in nature and therefore favours men in land distribution. While men have access to land they can own, control and dispose of, women, depending on their status, have only user rights and

temporary holdings. Different institutions carry different gender implications, and it is important to analyse these, asking about the nature of the institution, who is involved in its decision-making processes, and who has access to which resources, and how?

Gender analysis formed a major part of my fieldwork in bringing out socially differentiated issues and relationships with regard to access to land. While sex is a biological construct, gender is referred to as a social construct. For example, various questions I raised are directed to both men and women, to reflect the positions of both sexes, as women's and men's perception of the issue of access depending on their experiences and everyday encounters with specific elements of the landscape. Gendered identities are constructed through practices of land use, such as working in particular places. Ideas about gender are also used to include or exclude people from particular forms of resource access or interaction with particular parts of the landscape (cf Schroeder 1996 ; Dey 1984; Beedle 1980; Madge 2000).

Understanding the gendered nature and dynamics of power relations in land access and management is a very important element if gender gaps are to be closed. According to Foucault (1972) power is neither given, nor exchanged, nor recovered but rather exercised, and it only exists in action. Power is not primarily the maintenance and reproduction of economic relations but a relation of force, which gives it its repressive nature (Foucault 1972:89–90). While power, defined like this, may invoke war, struggles and conflicts, my interest is in how relations of power become re-inscribed through forms of unspoken warfare: re-inscribed in social institutions, in economic inequalities, in language, and in people's bodies (Foucault 1972:90). Power must be analyzed as something which is employed and exercised through a net-like organisation, and people or individuals circulate between its threads. In certain contexts, therefore, power relations are reproduced, maintained and manifested in the management of land resources. This helps comprehend how, for example, while some people remain marginalised, some are able to acquire high degrees of control over land, a high degree of autonomy and control over resources within their 'hearth-holds' (Ekejiuba 1995), and an ability to claim and make decisions about resources for use in their livelihoods.

Women who have access to land resources are in a relatively privilege positions to make decisions over the benefits deriving from their gardens and farmland. Those who acquire plots from their land-owning families are now aware of the economic value of landed property. Jainaba noted that she was able to open a shop after selling a portion of land which she claimed from her brothers when they shared the family land for fear of state control. She noted, I now go to my shop everyday and spend more time doing other business issues rather than having to spend 12 hours in a small piece of land to produce vegetables which take three months to see the returns.

Maimuna noted, 'I now have my own piece of land and I don't have to share my husband's compound with my co-wives. My husband can now visit me in my own compound and this gives me more power and autonomy to decide on things that would not be possible in his house.' Thus access and control over land resources bestows some degree of power on them.

Thus, a feminist perspective, paying explicit attention to institutions and power relations, analysed from a Foucauldian perspective as dispersed and fragmented, enables us to examine gender-differentiated knowledge and perspectives on land and livelihoods in the urban areas and their intersection with the Gambia's land policies and development.

Patterns of Land Access, Control and Conflict

Conflicts over Access and Control of Land

This section looks at access to and control of land as reported in interviews of men and women who are mainly the custodians of family land in the five administrative divisions in the Gambia. Generally, both men and women have access to land resources for various land use, namely: farming for cash crops; gardening by women for cash; and, subsistence. Both men and women are into cash crop farming. Land under the family or *kabilo* head is usually accessible by both men and women in the community. Women tend to have access to land for agricultural purposes to produce rice for household food consumption and vegetable gardening for both cash and household consumption. Women would control such land as long as they are married to the *kabilo*. However, access to land for residential purpose by women is very limited and male resistance is registered in all the divisions. It is observed that women are married off to other families and therefore do not need land for residential purpose. Men argue that giving land to women is creating confusion in the community and also contravenes the laid down tradition of family land which has never been subjected to control by women.

On the contrary, women have observed that the current situation they find themselves in with their spouses is forcing them to look for options they can call their own to live with their children. This trend seems to be a dominant view. In all the communities I have interviewed women in a series of focus group discussions across the country noted that their attempts to secure land for their children or even from late husbands families are not granted. On the other hand, women who refuse to be inherited after the death of their spouses are ejected by members of the family on claims that women cannot inherit land from their husbands; and even the children's interests are not taken account of in the light of the circumstances the women find themselves in.

Apart from the gender perspective of access and control over land resources, there is also the issue of conflicts among the land owners themselves as a result of

the State Land Act of 1992, which abrogates all land from communal ownership and vests it into government for development purposes. While this did not prevent custodians of land from accessing land under their control, there are conflicts of interest between the commissioners/governor and local custodians of land over land allocation. In the Western Region of the Gambia, court cases over land allocation are the order of the day. For example, one piece of land is allocated to two or more people and the issue of ownership is then contested by different parties (refer to newspapers). Double allocation of land and trespass by wrongful possession of land and a few cases of women reporting wrongful possession of custody of late spouse's land have been reported to the Office of the Ombudsman thus:

In March 2001 woman X filed a complaint at the Office of the Ombudsman of alleged unfair practice by the Curator of Intestate Department that her request for the settlement of the balance due to her and her late son regarding the piece of land left by the late husband were turned down on the basis that the file of the deceased was lost. In March 2001 an investigation was conducted by the Office of the Ombudsman with the Department of State for Justice pertaining to the aforementioned issue. In June 2007 the Department of State for Justice responded favourably that they have retrieved the file and have resolved to settle all necessary entitlement to the Widow (Office of the Ombudsman's Case Files).

Similarly, traditional custodians of land under the traditional tenure system are affected by state control of communal land. They have lost power over the land and the aura and recognition this confers on them has been eroded as people tend to consult with the governors/commissioners over land allocation. At the same time, the policy directives coming from the Department of Land and Natural Resources reinforce the dwindling powers of the traditional tenure systems and their custodians. As a result, the fights over land have affected communities resulting in court cases.

Land allocated to women by chiefs and village heads as farmland is under threat and most has reverted to state allocation which automatically leaves the women, particularly widows and divorces, landless and vulnerable. The following is the report from the Office of the Ombudsman

A widow lodged a complaint against a particular Alkalo in 2000. According to the complainant, she cleared a field situated in Manjai Kunda for rice farming. The then Alkalo now deceased allocated the land to her as a family plot, which she divided into two plots and assigned the other to her daughter. Upon the death of the then village head, the present village head seized the plot of land on his occupation of the chair of the Alkaloship and paid no heed to his predecessor's decision. This plot was later sold to a wealthy businessman who later on fell all the trees on the land and even killed her pigs in the process, which caused a row between them (Office of the Ombudsman's Case files).

In the Western region, which has very favourable vegetation for agricultural, residential and exotic environment for resorts and hotels, the state has taken over all the fringes of the Atlantic belt and dispossessed the traditional land owners. Land that was being used by communities for agricultural purposes has been alienated and provided to hoteliers. The Sannehmentereng and AU Village Housing Estates according to this study was not directed at ameliorating the poverty of the poor people since land allocations targeted private individuals, who in most cases are not Gambians. Fifty-four houses were built for the village and nearly all them were bought mostly by foreigners and a few Gambians living abroad. This new settlement brings in a new form of alienation of the communities around the areas and reveals the imbalances and the exacerbation of poverty among members of such communities in the western region. However, the study has revealed that most of the land owners were compensated. The value of compensation is based on the number of trees found on the plot of land involved and some of the respondents in the Kombo areas had between 5,000-10,000 Gambian dalasis in value of money.

This process of increased control of land resources by the state has led to dissatisfaction among men and women, suggesting a common grievance over the land that is being removed from the customary tenure system, with the false promise that development will impact on the lives of the people concerned in a positive way, and thus alleviate poverty. However, the accounts provided by the members of such communities speak a different story.

Narrative 1:

When I was consulted by the kabilo for the release of the land we all agreed because I thought it was in the interest of the whole community and the Gambia in general. I did not expect that the land was going to be given to an individual and sold again to outsiders.

Narrative 2:

If we were given the opportunity to sell the land ourselves we would have earned enough money to pay for our children's education, build better houses from the money we will earn and live a decent life.

Narrative 3:

All my children did not complete their education as we could not pay for their school fees when they went to high school. If I had sold the area taken from my Kabilo all our children will go abroad and study in the best school and universities.

In like vein, state-orchestrated conflicts can be discerned in Kiti and Seyfou where land which borders both communities has been offered to the president for use leading to the dispossession of many families. The current regime has given opportunities to new community leaders it feels have allegiance to its policies by making them chiefs and village heads. These new leaders usually give out land

that does not belong to them to the government without consultation with the original owners that used to work on such farmlands for their livelihood. At the same time, this landscape has also been occupied by foreign investors, while other parts of the land were identified for schools and offices. These dynamics have led to conflicts among the poor people who have been caught up in a situation of double tragedy. Lack of access to agricultural land deprives the citizens of such landscapes from effective livelihood strategies. On the other hand, where agriculture is taking a back seat, access to land by the community creates other possibilities for them to dispose of land so as to engage in other forms of livelihood strategies. People are increasingly becoming aware of the value of land as a critical asset in creating wealth. Locals observe that the state seems to have become the entrepreneur in land markets at the expense of the people who had control of the land, and whose poverty the state claims to address. The communities are divided on political party lines and there is conflict of power between members of the community who are the traditional owners of land and those who by virtue of their positions as the new district authorities tend to take control.

The contestations over land alienation are generally male-dominated and class based. For example, land people from land-owning families tend to be confronted with the problem. Intra-family squabbles occur over pieces of land that are given to the president or an entrepreneur without consultations or going through the channels within the land-owning family. This sometimes results in some members of the same families contesting ownership of land which sometimes results in court cases. Sometimes traditional channels are used to avert family conflicts. It is observed that the issue of land has created division among kins who normally would have come together to defend their common interest. This has also resulted in women defying their husbands and male elders just to get their own share. In the Kombos, the Mandinka are mostly the land owners and are greatly affected. Traditionally, the Mandinka women can access land but do not own it. Control of farmland is linked to their sexuality as married or inherited wives.

From a feminist point of view, these contestations among land-owning male members of the *kabilo* is creating opportunities for women to claim their rights over the resources which were hitherto under male control. In Gunjur, for example, women from land-owning families have been given shares from all the plots shared. The elders are beginning to take account of the need to recognise the rights of both men and women when they share land among *kabilo* members. It has also opened up the opportunity to look critically at traditions and practices which contribute to the marginalisation of women. GAMCOTRAP has noted significant and increasing agency of women over land resources as a result of the advocacy around the resources. On the other hand, the elite women have been allocated land that is state-owned, although the numbers of such beneficiaries are not impressive, because only 30 per cent of the allocation were given to such women.

The rural community are the most affected since most of the land abrogated by the state is in the rural areas. These are land resources that most of the families rely on for farming. Women are also dispossessed of such land for their seasonal gardening activities which provides household food security for the communities, as well as loss of income. The women's loss would also be in form of money from the sale of produce to pay for the education of their children and contribute to their social needs which they hardly get from their spouses.

Mobilising Resistance to Land Alienation

As a result of such sentiments, people have been organising themselves into resistance groups to express their agency. In the existing climate of fear and human rights abuses and uncertainty, the groups who have organised around land issues are not going public for fear of maltreatment and being accused of indulging in anti-government activities and do not seem to raise issues since the state is implicated. There is a delicate balance between the extent to which the state is willing to impose full administrative control on land in rural communities and the readiness and ability of the affected communities to call the state to account.

For example, the president in his inaugural statement during the inauguration of the Paramount Chief and Council of Chiefs warned that chiefs who antagonise their people by seizing their landed properties without consultation will be replaced if they are unpopular (Jammeh said district chiefs become unpopular because they seize lands of the people without proper consultation (FOROYAA newspaper, 25-26 February 2008.)

However, this process has taken on a gender dimension which has motivated educated women to claim family land that was under traditional tenure system. In Kartong, Gunjur and the other communities in the coastal fringes of the Gambia, women have engaged their male elders to share the remaining land. This consciousness has emerged as a result of the effects of the current land disputes that are registered in the newspapers and radio on a daily basis.

Similarly, organisations working on women's rights issues such as Action-Aid International The Gambia, under its women's rights thematic programme, have also contributed to women becoming more and more aware of their rights to demand landed property. The patriarchal discourse around ownership and access to land by women has also been systematically deconstructed and the barriers have been removed to enable women claim their rights under Shariah provision, one woman said:

Woman A's polygamous husband died leaving her with only one daughter, also leaving a compound and garden with a lot of fruit trees. When she requested for her daughter's share of the land and fruits from the garden she was denied because her child is a girl and was not considered for any portion of land. This contravenes the shariah provisions which require that all the children have rights to the fathers'

property. However, she refused to leave the house she lived in when her husband died (Faraba Banta).

The most prominent actors from civil society are the women's rights organisations that are advocating around resources. The National Women Farmers Association (NAWFA) has been very active in advocating access to and control of land by women in the past five years in the Gambia. NAWFA has been able to influence policy for women farmers to access and own land and have succeeded in leasing it for women. Thus collective negotiations have resulted in gains for women farmers by conferring on them powers to dispose of land as a group when they choose to do so. Similarly, other women's rights organisations like GAMCOTRAP have, through their campaigns, raised women's awareness of their strategic needs in resources such as land and their understanding of the social constructs inherent in the institutions that marginalise them. Traditional practices that affect women's rights in the communities such as wife inheritance, female genital mutilation, early marriage, and polygamy have been dealt with through awareness creation and sensitisation. This has yielded positive responses such as women, more particularly rural women, knowing their rights and making claims over them

Citizens Awareness about the Current Reforms

There are regional variations regarding the level of awareness of the citizenry about the land reforms and strategies to protect their land rights. In the urban areas many compound owners are aware of the land reforms and the information was received through the radio programmes that the Department of State for Local Government and Lands embarked upon. In the rural areas the chiefs, Alkaloolu (village heads) and religious leaders were the target of sensitisation programmes on the reforms. The ordinary citizens are not as aware as the chiefs and community leaders. Women had less information about the reform and most of them claimed to have heard the reforms in radio programmes and women's forums. Some of the women from land-owning families noted that they got the information that land was going to be removed from their *kabiloolu* to the government in their closed family meetings.

However, all the *kabilo* heads interviewed have acknowledged that they were informed of the reforms and the overall benefits this policy direction is going to bring to the overall development of the Gambia in general. They have noted that the policy was received with full acceptance and most of them observed that they were happy to concede some of the land to the state for the benefit of the majority. When members of the land-owning kabiloolu were informed by their representatives, it was considered a great pride to offer land for the government to undertake development to address poverty.

However, concerns were raised that the purpose for which they were told that the land was going to be used was not discerned. For example, some noted that the land was sold to individuals for residential purposes when they thought

it was supposed to be used by the state for development purposes. It is noted that the state appropriated the land from land-owning families and sold it to private individuals. This raised a lot of critical arguments regarding the state's intention to alleviate poverty among the poor and yet this has not happened. One of the respondents argued, 'If the land we gave to government for development purposes was allocated to each member of the *kabilo* we would have tackled our poverty situation, we are aware that a 30 metre by 30 metre piece of land can be sold for over 400,000 dalasi because of the location of our land. We now hear that the houses built are being sold for 7 million dalasi. The cost of one house can solve the needs of the community if it comes back to us.'

Land Reforms, Citizenship, Democracy and Development

From the foregoing discussions one would start with the observation that the land question in the Gambia is shrouded in controversy and unequal power relations. The shifting control over land between the state and the traditional land-owners, as well as among the new beneficiaries of land has tended to invoke political, economic and cultural problems and sensitivity among the different people affected. It also invokes complex issues of identity, entitlements and citizenship. Within these dynamics, different people have interpreted the land issue in their own ways. The houses in the Sanamentereng and AU Housing Estates have been acquired mainly by non-Gambians, which gives them power to own and control the space and the environment. However, this does not confer citizenship status on them. While some have bought the houses for rent to the public, others have bought them to use them as their final homes when they decide to return or relocate from abroad. Most of those who are non-Gambians have not sought citizenship. However, the study did not explore into whether they are interested in becoming Gambian citizens or not.

Just a few metres from these exotic estates are the traditional owners of the land who were encouraged to release the space for development to alleviate poverty and ultimately bring development to them and other Gambians. This raises the issue of their entitlements and rights to development as citizens.

The outcomes and impacts of the land reforms have resulted in a variety of narratives among the citizenry, with competing social forces and contestations over land resources in the Gambia. In the context of democracy, citizens claim they have the right to choose the path to their own development with support from the state, but that this is not being realised. At the same time, the rights of the other actors should be protected and respected. The reforms have created a double-edged sword that has tended to increase land-related conflicts, which are likely to grow in the near future. There is an emerging trend among land-owners that communal land be shared and land declared by the Tourism Development Area under the state Land Act of 1992 be maintained by the local people who

already had started some development activities. The local people are beginning to assert their rights by building some low-cost tourist resorts over the areas declared as resorts which eventually fall into the hands of European entrepreneurs and are converted into hotels for tourism.

However, this contestation over land rights must be seen from the broader dynamics of the political economy of the Gambia, particularly the influences of external forces, such as the international economic and financial institutions lending conditionalities and discourses of privatisation, enterprise development and tourism. Yet, democracy needs to respond to the context specificities of the different actors who are implicated in the overall quest for national development.

To the extent that the land reforms have negative gender implications and have led to limited development, it is the poor people who have suffered most. In the circumstances, women suffer the brunt of the reforms because traditionally they have been relegated to the category of the landless. Even though women had access to land under the traditional tenure systems, ownership was patrimonial. However, the land reforms have had some positive outcomes for some women, especially from the land-owning families, who have increasingly had access and control over land, because families are trying to avert any losses to the state. In this way, women have demanded individual rights to property and realised them. At the same time, educated women are responding to the potential access that the land reforms have brought, and some have gained access to land if they can afford it. In addition, the plots allocated by the state through the empowerment of the middle-income earners have resulted in 30 per cent of the beneficiaries who own land being women.

This land reform process has resulted in new understandings of democracy. With the removal of land from traditional tenure systems to state land the issue of democracy and good governance has become critical to citizens, and raises contested ideas about development. The non-Gambians who invested in land in the Gambia are part of the citizenry, but of a different status, which is also a subject of contested discourses around sustainable development. There is thus a need to seek a broad understanding of the effects of land reforms, considering that all the actors require security of tenure.

Conclusion

This chapter has discussed the State Lands Act of 1990 of the Gambia and its effects on various actors, particularly its effects on the livelihood of the poorer people. It has highlighted the different discourses on land reforms and their gender dynamics.

It has been noted that the land reform, which was planned and intended to address poverty for Gambians in general, has in actual fact responded to the

needs of the middle class in the Gambia. It has resulted to the appropriation of land, mostly from poor rural communities, and has made them more vulnerable. As a result, inter and intra-family disputes have emerged, creating conflicts and contestation over certain landscapes resulting to court cases. These dynamics have resulted in the traditional land-owning families realising the importance of land not only for its agricultural use, but also as a wealth-creating and generating resource, and its potential use in alleviating poverty among their families

While ordinary Gambians welcomed and anticipated that the land reforms had environmental and conservation ends, the state embraced the neoliberal emphasis on private sector development in the reforms. This situation has resulted in subtle resistances among members of community and non-citizens who could afford the prices of the exotic houses located in the midst of poor people, who hitherto had used the land for their daily survival and livelihood strategies. Similarly, this process has brought to light a gender dynamic which triggered some women from land-owning families to demand individual title to portions of land. The chapter has noted that the rights of the citizenry and non-citizens regarding access to, ownership of and control over land resources in the Gambia, are complex and competing, and that they require considered mediation.

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Emerging Land Rental Markets and Transaction Costs in Rural Ethiopia

Bezabih Emana and Assefa Seyoum

Introduction

The landholding system in most developing countries is not simply an economic affair; rather, it is intertwined with the people's culture and identity. It is well known that for rural residents in most developing countries, land is the primary means of production used to generate a livelihood for families and the main asset through which farmers can accumulate wealth. Equally important, also is the fact that land is what the family can transfer in the form of wealth to future generations. This partly explains why land-related issues usually generate intense emotional reactions among the people in developing countries in general,, and Ethiopia in particular.

Thus, land remains an asset of a great importance to African economies, as a major source of income, food, employment, and export earning. Land also continues to have great social value as a place of settlement, providing a location within which people live (Toulmin 2000).

Ethiopia is among the countries that vest title to land in the state. Individual households have use rights to the land allocated to them for an unlimited period and they can transfer the use rights (usufruct rights) to an heir. Households can also rent out their land use rights. However, land cannot legally to be sold or used as collateral. The state may compensate and take the land for public purposes. The alleged reasons are usually for development. Control of the land market is

considered to result in the emergence of a landless class through the consolidation of land into a few large commercial and capital-intensive farmers, which may result in the misallocation of scarce capital and mis-utilization of abundant labour (EFDR 1994). The land tenure issue in Ethiopia has provoked heated debates among intellectuals (Dejene and Teferi 1995).

Despite the private-public ownership debate among different bodies, the government has recently started a cadastral survey, land registration and certificate provision to guarantee rural households usufruct rights to individual households in four regional states of the country, and this is expected to be implemented throughout the country. It is argued that without dwelling upon the issue of ownership, genuine policies may focus on the achievement of economic objectives by instituting guaranteed possessions and by allowing free transfer of land use rights. Platteau (1992) argues that a compromise between efficiency and equity could be achieved by combining prohibition of land sales with free land rental transactions, either at local or regional levels.

The recent land redistribution conducted in the 1990s also targeted female-headed, landless and marginalised households. Following the land redistribution, informal land rental markets, including sharecropping arrangements, are emerging. Moreover, rural land sales without legal enforcement have become common in Ethiopia. On the other hand, factor, insurance and product markets are still missing and/or incomplete in the rural Ethiopia. The emerging land markets in most parts of Ethiopia have so far not been subjected to appropriate research and policy analysis and, as such, are not adequately backed by legal and other institutional support such as extension and administration.

Under such circumstances, the absence of effective land markets implies a loss of equity and efficiency to the potential participant households in particular and agriculture and related sectors in general. This chapter argues that there is a strong linkage between land tenure security (an institutional factor) and agricultural performance. Compared with weak and insufficient property rights, tenure security increases land transactions, which facilitates land transfers from less efficient to more efficient users, reduces land disputes and raises productivity through increased investment (Roth and Haase 1998, citing Feder and Noronha 1989).

Historically different regimes in Ethiopia adopted different policies and institutions, which directly and indirectly affected the land use systems and land markets. Several authors argue that land tenure is insecure in Ethiopia, while some others witness that tenure insecurity has worsened in the recent years. The lack (or inadequacy) of mechanisms for land transfer to more efficient households, disputes between contracting parties, border disputes (due to tensions between previous holders and new holders), and administrative restrictions are the main features that may hamper efficient resource utilisation and agricultural performance. Legal

and/or administrative prohibitions on land markets and land use conditions that reduce the breadth and duration of land rights, and also prohibitions that restrict farmers' use rights may reduce the benefits of leasing.

In Ethiopia, informal land rental/sale markets are new, underdeveloped, fragmented and hence transaction costs are high (Tesfaye et al 1999), although they have emerged in many parts of the country. Empirical information on the sources, magnitude, and the types of transaction costs is limited. This chapter examines the reasons why farmers participate in land transactions, the costs of transactions, the characteristics of contracting parties, linkages between land and other markets (labour and capital), in order to understand how to improve rental markets, and thereby enhance resource use efficiency and productivity. A study of land markets is pertinent and timely due to the fact that there has been a dramatic shift from replacing the traditional land tenure systems towards facilitating an indigenous system of secure tenure. Specifically the chapter:

- examines the factors leading to land rental market participation and determine the features of land rental market participants,
- defines the types and magnitude of land transaction costs, and
- identifies linkages between land and other markets such as credit and labour.

The study was based on the review of land policies in Ethiopia and the case studies conducted in Arsi and eastern Shewa zones of Oromia Regional State of Ethiopia. The specific study areas (Gadab-Asasa and Lume districts) are located at 280 km and 75 km southeast of Addis Ababa, the capital city of the country, respectively. The different land-related policies adopted by past and present regimes affected the land markets in these study areas.

Sample respondents were selected using two-stage random sampling technique. In the first stage, two districts were selected purposively; and then, target populations were classified into non-overlapping sub-populations called strata, each of which is internally homogeneous (Cochran 1953). The strata were formed based on access to market/infrastructure, population density, and access to extensions services, irrigation (natural capital) and farming systems. Then, random sampling was employed to draw eight farmers' associations (FA) in both districts.

In the second stage, a total of 360 households were selected randomly with approximately proportional number in each FA. Both primary and secondary data were collected from different sources to meet the objectives of the study. A structured questionnaire was designed to encompass a wide range of variables such as the household characteristics, incomes, and land fertility, costs (ex-ante and ex-post) of land transaction, labour and credit marketing and so on. Information from individuals working in various institutions such as social courts of the farmers' associations and districts were also instrumental for the assessment of the

survey data. Extension agents in the respective study areas were also interviewed regarding their opinions on land markets.

Both descriptive statistics and econometric analyses were employed. Descriptive statistics were used to estimate the magnitude of land transaction costs, its trend over years and linkage to credit access and so on. A multinomial logit model was employed mainly to analyze the factors affecting participation in land rental market and to determine the features of participants of land rental markets. Participation in land marketing is an unordered choice available to households to maximize the utility gained from the options. The econometric model used for the analysis is discussed in Annex 1 while the factors used in the econometric model are provided in Annex 2.

Ethiopia's Land Tenure Systems and Land Transactions in Perspective

Land Tenure Systems and Markets in Ethiopia

The land tenure system has been central to the system of power and governance in Ethiopia, and it has evolved in response to the changing political environment, rural demographic dynamics, expansion of markets, natural resource conditions, and social and physical infrastructural conditions (Ahmed et al 2002). Historically, the land tenure system of Ethiopia can be broadly classified into three: (i) the feudal land tenure system, (ii) the state ownership of the socialist system, and (iii) the semi-liberal and market-oriented system. Each of the tenure systems has peculiar features regarding forms of land transaction.

The Feudal Land Tenure System (Pre-1974)

The land tenure system in Ethiopia during the Emperor's regime served as an instrument of securing power and governance, as land was the major source of income and livelihood in this predominantly agrarian economy. The land tenure system varied from region to region due to the diverse geographical and cultural settings and the different socio-political events that occurred in different parts of the country. These different land tenure arrangements, in general, can be categorised into usufructuary tenures and private tenures (Rahmato 1984). The usufructuary tenure systems include the *rist*, *semon* and *maderia* or *yemengist* forms that differ principally in the type of institution holding the ultimate reversionary rights over the land.

The *rist* system was one of the oldest and most common forms of usufructuary tenures that characterised the land tenure system. *Rist* was a situation whereby a holder could claim a portion of land from his or her ancestors who originally held the land and the holders of the *rist* could bequeath their holdings but could not sell, mortgage or exchange it in any form. The security of individual holdings

was protected through honouring of hereditary rights and denying access to 'outsiders' (Ahimed et al 2002).

The *semon*, a system where the church held the primary reversionary rights, arose when the Crown granted rural land to the Ethiopian Orthodox Church to generate financial and material support for its services. The church during this period owned a substantial share of tax-free rural lands. As the church itself was not directly involved in farming, it leased out its lands to local farmers under sharecropping arrangements and collected the rents as well as land taxes (tributes) that would have otherwise gone to the government treasury.

Maderia or *yemengist* lands were originally unoccupied lands that were declared state property, most of which were located in the south. When the imperial government conquered the south, south-west and eastern parts of the country, all unoccupied (unsettled) rural land was declared state property and given to officials and loyalists of the Crown (Dessalegn 1984). During the military advance by the emperor, militiamen were among those who received land in these regions. This constituted what was called the *gebbar* system, which is a form of freehold tenure. Holders of such rights had the privilege to transfer the land through sale, mortgage or exchange subject to payment of land tax to the government treasury. As most of the lands were granted to the powerful officials and loyalists of the Crown, the local populations in these areas became landless and entered into tenancy relationships with landlords.

All the *rist*, *semon* and *maderia* or *yemengist* tenures were similar in providing use rights to the holder while the institutions held the ultimate reversionary rights over individual holdings were different. The nature of tenure arrangement and security of tenure on individual holdings was highly dependent on the holder's relationship with the institution governing access to land. Hence, land rental market existed to a varying degree in different regions depending on socio-political situation.

The State Land Ownership of the Socialist System (1974 – 1991)

The 1975 popular land reform has been considered by many as a radical measure that abolished tenant-landlord relationships in Ethiopia. The reform was designed to alter fundamentally the then agrarian relations and make those working the land the owners; increase agricultural production; create employment; distribute land and increase rural income; and provide a basis for agricultural expansion. The provisions of the proclamation (No. 31/1975) include: public ownership of all rural lands; distribution of private land to the tiller; prohibitions on transfer-of-use rights by selling, exchange, succession, mortgage or lease, except upon death and only then to a wife, husband or children of the deceased; and in the case of communal lands, possession rights over the land belonging to those working on the land at the time of the reform. Since the 1975 land reform, the right to own

land was vested in the state. The power and responsibility to allocate land was given to local peasant associations. Through this the government became the controller of the land. The only means of obtaining access to land was through membership of the peasant associations.

In this system, farmers had open-ended usufruct rights to land in peasant associations where they reside, but subject to proof of permanent residence, and ability to farm continuously and meet administrative duties and obligations. These use rights are inheritable. All kinds of land transaction and wage labour in the rural areas were banned. Hence, farmers could not sell, mortgage, lease out and transfer the land allocated to them, nor use hired labour. Land rental and farm labour markets legally ceased to exist. Moreover, credit institutions were state-controlled and rationed through cooperatives.

The post- Derg Period

After the ousting of the Derg in May 1991, the new government reaffirmed what the previous regime had established by constituting state ownership of all rural lands. Article 40(3) of the constitution states that:

The right of ownership of rural land and urban land, as well as of all natural resources, is exclusively vested in the state and the peoples of Ethiopia. Land is a common property of the nations, nationalities and peoples of Ethiopia and shall not be subject to sale or to other means of transfer.

The new constitution, which was adopted in 1994, allows temporary leases. The constitution guarantees the rights of peasants and pastoralists of free access to land and the right of individuals to claim compensation for the improvements they make on land including the right to bequeath, transfer or remove such improvements when the right to use the land expires. Now, farmers have the right to use the land indefinitely, lease it out temporarily to other farmers, and transfer it to their children but cannot sell it permanently or mortgage it. However, it is not clear how peasants' rights of free access to land can be assured in practice, and how much land peasants are entitled to. Those issues have been left to the regional governments to resolve and there have been significant differences across the regions with respect to the development of a regional land policy.

As population grows, the pressure on land is increasing and opportunities of getting land to allocate to newly-emerging households is quite limited. As a result of an increasing population of young farmers who are often landless, there is unbalanced resource endowment. This has led to the emergence of land markets and opportunities to trade and equalise factor endowments. Land rental markets transfer land resources from the poor to the rich and income from the rich to the poor, without creating landlessness as discussed below.

Land Tenure and Security

The common argument against the current Ethiopian tenure system is that the lack of tenure security restricts land productivity through long-term land improvement investment measures (EEA/EEPRI 2002). They argue that in countries where private tenure system (namely that the owner has the full right to use and either rent or sell the land) the problem of land tenure insecurity is resolved and incentives exist for landowners to sustainably utilize their land. However, others argue that this may enhance land concentration in a few hands, with negative implications on social equity, and that this leads to underutilisation of the land resource, where there is an imperfect land market (Ibid).

Moreover, there is a widely shared view that tenure security is a necessary, but not a sufficient condition for economic development (Roth and Haase 1998). Tenure security, which can be an individual's perception and unobservable, may be influenced by three elements: the breadth, duration and assurance of property rights, within the countries' legal and economic system (Place et al 1994). Rental markets are often constrained due to one or more of these factors. Tenure security increases credit use and worthiness, increases land rental transactions, reduces the incidence of land disputes, and raises productivity through increased investment (Roth and Haase 1998). Exclusive and secure property rights are associated with on-farm investment and farm productivity in South Africa (Kille 1993). Li et al (1998) reported that the right to use land for long (indefinite) periods of time encouraged the use of land investments in China. Long-term use rights, however, did not appear to affect the incentive of farmers to use short-term, current inputs.

A study by EEA/EEPRI (2002) reported that 62 per cent of the farmers who support the current land tenure system in Ethiopia plant trees and build terraces. Farmers' behaviour to build terraces was negatively related to their perception of future land redistribution. Moreover, Berhanu (2001) reported that tenure security favours long-term conservation investments such as stone terraces, whereas tenure insecurity favours short-term investments, such as soil bunds. Short-term tenure security is associated with investment in cheaper, less durable soil bunds. Furthermore, Bezabih (2006) indicated that tenure insecurity affects the decision to adopt soil conservation measures and fosters natural resources degradation through reduced motivation for soil conservation, planting of trees and perennial plants, as well as suspicion over the land ownership system.

Experiences from many countries suggest that attempts to replace customary tenure with title deeds have not been successful. Policy analysts have turned their attention to ways of facilitating a shift towards a more secure indigenous tenure system. In sum, there is no questioning of the complementary relationship between tenure security and agricultural performance. The issue, however, is what policy and institutional arrangements are more appropriate for a given country in

the short run, medium and long term, in order to use more effectively the existing arable land resources and conserve them for future.

Land Marketing and Transaction Costs

Land marketing is the process of change of title/usufruct right to land or control over the land. Growing demand for arable land is motivating the landless to engage in land rental markets, which often takes place informally in Ethiopia.

In Ethiopia, the population pressure, the heavy dependence on agricultural production, and land shortage have served as driving force for emerging land transactions. Since land is owned by the state, land transactions can only be done between farmers owning usufruct right to land from peasant association and landless farmers or farmers who suffer land deficit but have more of other factors of production like human labour, traction power and working capital. Transactions include fixed rents or leases, sharecropping, borrowing and gifts, which involve non-permanent or short-to-medium term cessions of land.

This creates the opportunity for the landless farmers to get access to land through renting or sharecropping arrangements, and tends to involve active young farmers who produce crops for the market using rented land (Bezabih 2006). The land is rented either for a season or for a period of more than a year. Moreover, the sharecropping arrangement places land as an equivalent resource to all other inputs, except chemical fertilizer. That is, due to the critical shortage of land, the landless who rents land agrees to provide oxen or labour for ploughing, cultivation, weeding, harvesting, threshing, transporting of grain and seed, and crop protection. The landowner provides land and the yield is usually shared equally.

Furthermore, Kumar and Chamola (2000) have observed that farmers tend to engage themselves in both the leasing-in and leasing-out of land. The extent of lease activities depends upon the particular situation of the area like climate, cropping pattern, landholding size, and availability of irrigation facility, quality and conditions of soil, education level, employment opportunities, level of agricultural development and landlessness. Thus, landlessness can be looked at either from the point of view of having no own land or having no land to operate on (Chadha 1994).

Gavian et al (1999) demonstrated that there is a formal land transaction involving an official contract from a Peasant Association (PA) and an informal transaction, where an unofficial contract is made between farmers without involving the PA. Thus there are two types of formal arrangements under which farmers gain access to crop lands in Ethiopia. First, the PA can formally allocate the land directly and it may rent out the land with the agreement of the leaser to pay a fixed amount of cash in advance or arrange sharecropping with a commitment

by both parties to share the cost of input and benefit of output, usually for one cropping period.

Huque (2000) has shown that sharecropping and fixed-money renting systems of land transaction are practiced in different states of India. He observes that sharecropping was slowly giving way to land leasing for fixed money mainly due to the influence of growing agricultural commercialisation. He also states that the dynamics of market-led development may favour the large farmers to have great accessibility to the land-lease market, and that it tends to be iniquitous in nature. In this way, he argues however that the overall economic benefit may be distributed equally, only if the marginal and small farmers gain from improved employment opportunity.

Transaction costs are costs involved in carrying out any exchange, and these include information, negotiation and, enforcement and/or monitoring costs (Williamson 1986). Transaction costs are likely to increase with the involvement of a large number of agents, the increase in sophistication of the transaction, the level of technology involved, and where there is a disintegration of communal, tribal, familial and cultural traditions that reduce risk (Datta and Nugent 1989). The risk from a land transaction can be increased when property rights are not secure and there is uncertainty about legal contract enforcement. In addition to tenure insecurity and uncertainty, high transaction costs may constrain land transaction markets in Ethiopia due to ambiguity in property rights, such that the buyers usually have to incur significant search, enforcement and litigation costs (Platteau 1995).

Landless farmers opt to acquire land for cultivation through renting, sharecropping and borrowing of land (temporary permission to use land freely), and these are significantly different options of contracting land for farming. Informal land rental markets are common in different parts of Ethiopia. For instance, 26 per cent of farmers leased out land in Tigray during 1995-96 (Berhanu 1998). The figure was 15-33 per cent in northwest Ethiopia (Tesfaye et al 1999) and 43 per cent in Debre Libanos area (Aklilu and Tadesse 1999). Evidence on the magnitude, type and sources of transaction costs of land rental markets as well as the advantages of written contract agreements is limited.

This review suggests that there are historical dynamics, which influence the emergence of the land rental market in Ethiopia, and that these still appear to be imperfect in the sense of a free market economy. Despite legal frames limiting land transaction, there are natural and social factors which encourage the emergence of land markets. The following section provides recent empirical evidence of the trends.

Emerging Land Rental Markets and Transactions Costs

Description of Socio-economic Factors Affecting Land Rental Market

The age of the household head is one of the important factors that affect decision behaviour regarding participation in land transaction. The average age of the participants (44 years) is less than that of the non-participants (47 years) and their difference is significant at 5 per cent probability level. This indicates that young farmers are more likely to be involved in land transaction than the older ones. Among those participants, the farmers that are relatively older participate in land transactions by leasing out their lands more than the younger farmers do. The results show that the average age of households that participate in land leasing out is about 50 years while that of the lessees is about 40 years (Table 6.1), which is significantly different at one per cent probability level.

This pattern could be due to the fact that older farmers own relatively larger farm sizes than the young farmers. This implies that the age of the farmers is significantly associated with the decisions to participate in the land marketing. The finding of this research is consistent with the research results of studies conducted by Mani and Pandey (1998) in Bangladesh, which stated that the age of the household head significantly influences the decision of the household to involve in land transaction.

Besides, the dependency ratio for the households that participate in land transaction is higher than that of the non-participant households, with a significant (at 10 % probability level) difference. This indicates that labour availability can be one of the key factors for the decision to participate in land transaction since those with larger labour available rent land and those with labour shortage lease it out.

Table 6.1: Age and Family Size of the Sample Households

Variables	Lessees	Lessor	t-value	Participant	Non-participant	t-value
Age	40.41	50.00	-5.018***	44.00	47.00	2.085**
Dependency ratio	0.88	0.87	0.17	0.88	1.043	1.77*
Total family (in ME)	5.42	4.00	3.980***	4.91	5.125	0.76
Average family size	9.31	6.84	4.300***	8.39	8.604	0.389

Source: Own survey, 2006

Livestock is an asset which shows the wealth status of rural households, and it is the major means of rural saving. Hence, the farmers own livestock of different categories ranging from poultry to oxen, with an average herd size of 9.37 Tropical Livestock Unit (TLU) per household. However, it was found that except for the number of oxen owned, the overall number of livestock that the household had did not significantly influence the decision of the farm households to participate in land transactions.

Table 6.3: Number of Livestock Owned Per Sample Households

Owned	Lessees	Lessors	t-value	Non-participants	Participants	t-value
Oxen	2.94	1.09	7.162***	1.74	2.20	-2.561**
Cows	4.03	1.16	4.124***	2.52	2.81	-0.695
Heifers	2.34	0.61	5.488***	1.33	1.61	-1.351
Bulls	1.55	0.36	4.337***	0.92	1.06	-0.854
Sheep	0.96	0.11	2.536*	3.91	4.61	-0.792
Goats	1.83	0.29	3.776***	0.89	1.22	-1.353
Other livestock	10.28	2.78	5.272***	7.75	7.1	0.393
Tropical Livestock Unit	14.07	3.93	6.059***	8.87	9.86	-0.814

Source: Own survey (2006)

As shown in Table 6.3, the farmers who have large numbers of oxen, cows, heifers, bulls, goats and other livestock participate as lessees in land more than their counterparts (who have fewer livestock), and in all cases the difference between the two groups is highly significant at one per cent probability level. Moreover, the livestock holding of the lessor is by far less than that of the lessee. This indicates that the poor households lease their lands out to generate income to meet the immediate subsistence requirements of the household. With increasing poverty, limitations on land transactions may result in the poor being more vulnerable to short-term food insecurity.

In Ethiopia where an extensive farming system is dominant and intensive production system is not widely applied, the area of land put under cultivation determines the amount of production, and hence the livelihood of the farming community. As a result, farmers attach high value to the land they own (Bezabih 2006). In some societies, land assumes more than economic value, as land is a source of prestige and is inherited by a married son. In the Sidama areas of Ethiopia, for instance, it is the traditional responsibility of the parents to allot land to the newly-married couple, whatever size of land is available to the household (Bezabih 2006). However, under the current circumstances of extremely declining farm size, this tradition is becoming a threat to the parents, as the sons continue to claim land from the fathers which they cannot provide. Thus there is an increasing number of landless young farmers in the rural areas.

Thus, land size and land use system could be some of the most important factors that determine the participation of farm households in land transactions. But the results of this study show that variation in land size does not have any significant influence on the decision of the household to participate in land transaction. Furthermore, it has been found out that there is no significant difference in land size between the households who take part lessees of land and the lessors. On the other hand, a study conducted by Mani and Pandey (1998) in Bangladesh indicated that with an increase in the size of a landholding, the farmer had the tendency of being a lessor and, conversely, the probability of being a lessee increased with the decrease in land access among smallholders.

However, the lessors in our sample were found to have larger farms sizes (of irrigated and rain-fed land) compared to the lessees, which is significant at 10 per cent probability level. On the other hand, the lessee has got significantly more grazing and forest/ bush land than the lessor and their difference is significant at one and 10 per cent probability level, respectively. This implies that the emergence of land transaction is not necessarily due to landlessness; rather, it is due to inequality in the quality of land allocated to households (Table 6.4). Moreover, land transactions allow farmers to access land of different qualities to engage in the production of enterprises for which they do not have adequate land resource.

Table 6.4: Land Holding and Land Use of Sampled Households (in Timads*)

Land use	Lessees	Lessors	t-value	Non - Participant	Participant	t-value
Irrigated area	0.97	1.72	-1.795*	1.18	1.40	- 0.609
Rain-fed area	9.47	11.26	-1.734*	9.47	10.06	- 0.922
Grazing land	1.59	0.32	3.358***	1.65	1.05	2.043**
Forest land	0.14	0.04	1.860*	0.14	0.10	0.822
Homestead and garden	0.48	0.41	0.644	0.44	0.43	0.176
Degraded land	0.04	0.42	-1.515	0.15	0.34	- 1.210
Total land owned	12.69	14.17	-1.169	13.03	13.38	- 0.409

* Timad is local area measurement (1 timad = 0.25 ha)

Source: Own Survey (2006)

The income of the household and its sources tends to be related to the participation in land transactions. The results of the study show that there is no significant difference between income level of those who participate in land transactions and the rest. However, there is difference when it comes to the sources of income of the lessees and the lessors. The difference in income of the lessee households and lessors is determined by the size of perennial crops and livestock holding. In most cases, the lessors are poor and are involved in wage work (Table 6.5).

Among the households that participated in land transactions, the lessees earned significantly larger incomes from perennial crops, livestock and livestock products and other off-farm activities, compared to the lessors. Meanwhile, the lessor households could earn greater incomes from wage and other activities. The average incomes obtained from wage and other sources is Birr 503 and Birr 161 respectively for the two groups.

Table 6.5: Source of Income of Sampled Households (in ETB)

Source of income θ	Lessees	Lessors	t-value	Non partici- pant	Partici- pants	t-value
Annual crops	1997	1835	0.349	1867	3159	0.250
Perennial crops	531	70	2.151**	632	381	1.047
Livestock products	392	85	4.031***	287	264	0.350
Wage	77	503	-3.121***	177	249	- 0.940
Trade	251	9.57	1.766*	198	152.23	0.308
Employment	22	42	-0.460	85	29	1.168
Other off-farm	41	0.00	1.904*	33	23	0.440
Other sources	38	161	1.984**	13	91	- 2.600***
Total income	3348	2704	1.086	3297	3159	0.264

θ The income obtained from bee-keeping and remittance is almost zero.

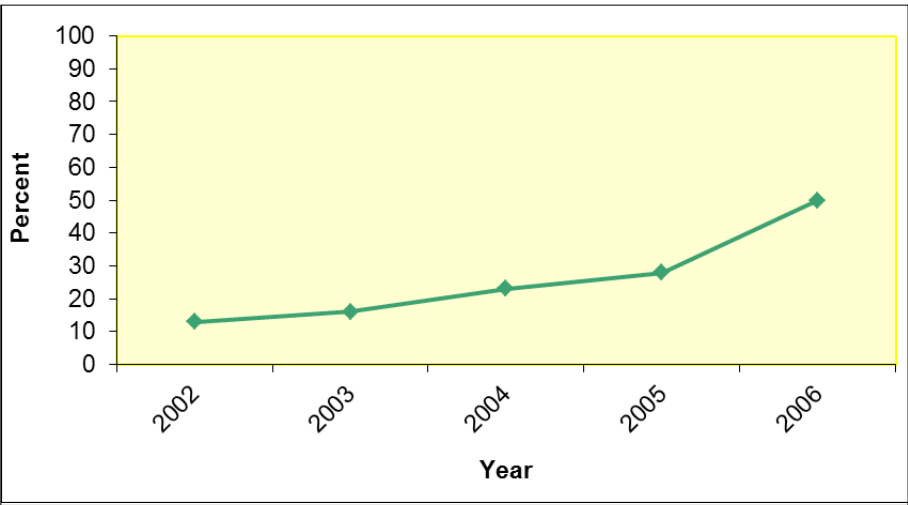
Source: Own survey (2006)

The Relation Between Land Transaction and Other Factor Markets

According to Bezabih (2006) the landless farmers or those with small size of landholding access land through renting or sharecropping arrangements. Sharecropping arrangements value land as being equal to all other inputs (except chemical fertilizer) due to the critical shortage of land, especially among the landless.

This fact was also observed in the study area, as the current Ethiopian land management policy permits access to land both from the local government body as well as through various arrangements made among individuals. Although there is no clear indication about the time when informal land transaction started in the study area, there are different kinds of informal land marketing arrangements in which the farmers are engaged. Landless farmers usually get access to land through informal transaction either on rental, sharecropping or from their relatives in the form of gifts or inheritance. The informal rental market is a way out of the legal frames which fail to account for the local needs. This study focused on the first two rental arrangements.

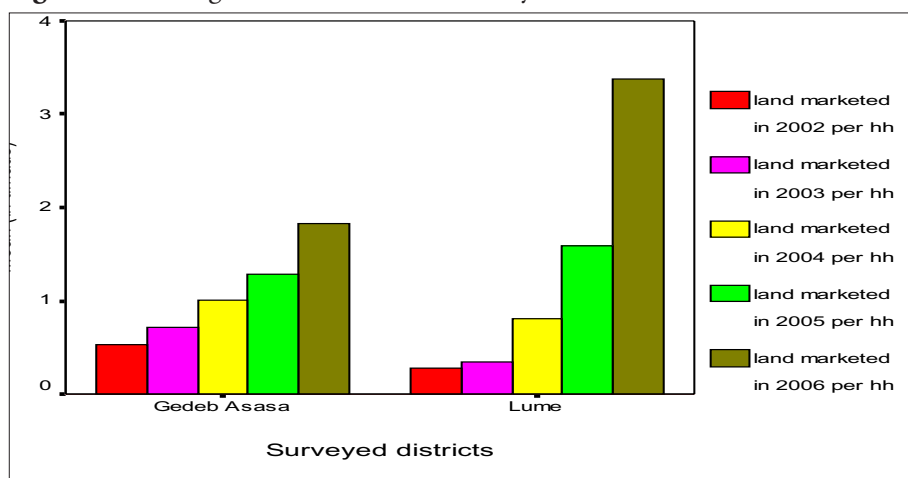
Figure 6.1: Trend of participation in land marketing



Source: Own survey (2006)

The trend of participation in land marketing increased from 10 per cent in 2002 to 50 per cent in 2005 (Figure 6.1). It is not only the percentage of households but also the average area that is transacted per household that increased over the last five years. There is also a difference between the average rates of incremental rented area between the two study districts. In Lume District, the size of land transacted per household increased rapidly, since Lume is closer to cities than the other district (Figure 6.2).

Actually, the informal land market tends to be the consequence of inequity in the endowment of factors of production as can be seen in the proceeding section. But, it is important also to look at the forces that drive household to participate in land marketing and their relative importance. Capital shortage for procurement of inputs of production like fertilizer and pesticides is found to be the most vital for about 39.1 per cent of sample households to lease their land out (Table 6.6). So the rise in land market participation may also be related to the elevation of the prices of fertilizer and other agricultural inputs. Yet, the input market, especially the fertilizer market, is also controlled by the public institutions.

Figure 6.2: Average Transacted Land Trend by Districts

Source: Own survey (2006)

About 36.2 and 27 per cent of the sample households indicated that they leased out their land due to the shortage of traction power and other reasons respectively. About 12 per cent of sample lessors mentioned labour shortage as the main reason for leasing their land out. This indicates that land transactions have a certain association with the pattern of oxen and labour markets.

Moreover, there is linkage between land transaction and the credit market. As land is not the only production input, its transaction tends to be influenced by access to other factors of production such as credit, traction power, labour and fertilizer. Access to credit showed an increasing trend, with land transaction having gone up over the previous five years. The result shows that 41 per cent of the households had access to credit (Figure 6.3).

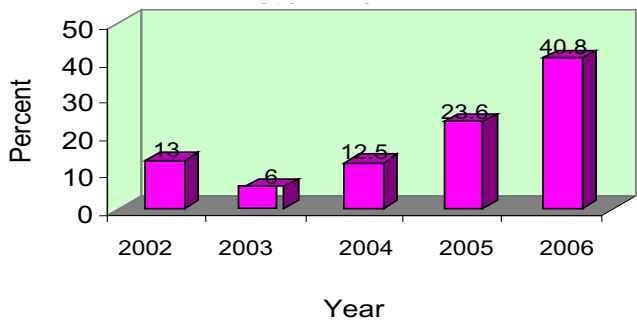
Table 6.6: Sampled Households Reasons of Leasing Land Out

Reason for lease out	No. of cases	Percent
Human labor shortage	8	11.6
Draft power shortage	25	36.2
Capital shortage	27	39.1
Other reason	19	27.5

Source: Own survey (2006)

Land leased by the government is considered an investment and it comes with the facilitation of loans from banks at reasonable interest rates. There are other incentives such as reduced tax on capital invested and other income tax privileges. Smallholder farmers access credit from microfinance institutions, but the loan is not available for land renting. Moreover, the landless cannot access credit for the purchases of farm inputs. This limits the land rental opportunities further.

Figure 6.3: Percent of Sample Household with Access to Credit over Time



Source: Own survey (2006)

Transaction Costs

Transaction cost in this study relates to the costs that go with the process of transferring landed property from one individual to another. It is usually categorized as *ex-ante* and *ex-post* based on whether the transaction cost is incurred before or after transfer of the plot of land.

The average *ex-ante* transaction costs that the lessees incur are about 22.25 Ethiopian Birr (ETB) while the lessors incur 16.78 ETB. This shows that searching for land involves more costs than searching for clients since farmland is getting scarce. Besides, the lessee incurs an *ex-post* transaction cost of 37.84 ETB whereas the lessor incurs 5.80 birr. In both cases *ex-ante* and *ex-post* transaction costs do not show statistically significant difference between lessees and the lessors. These transaction costs usually range from and include hosting the other party during negotiation on land price and visits by groups of people to plots, which entails travel costs, and so forth. There is no commission levied as a transaction cost for participation in the land marketing. The total transaction cost is estimated to be about 83 ETB per negotiation over a given land property transfer (Table 6.7).

Table 6.7: Transaction Cost and Average Price of Land Marketing (ETB)

Transaction cost	Lessees	Lessors	t-value	Total
Ex-ante	22.25	16.78	0.196	39.03
Ex-post	37.84	5.80	0.161	43.64
Cost/ participant	60.09	22.58	0.139	82.67
Land price	Gedeb Asasa	Lume	t-value	Average
Annual price (ETB per ha)	1511	1312	0.924	1416.64

Source: Own survey (2006)

The results show that the average land price is about 1,511 ETB per ha at Gedeb Asasa while it is 1,312 ETB per ha in Lemu district. The unit price is not significantly different between the sample districts. However, in the other parts of the country, it has been found that the average rental value of land ranges from Birr 585 per ha at Chanco Obi of Oromia to Birr 1,355 per ha at Finchawa (SNNPR). Since the average land accessed through transaction was larger, the total cost of renting land per household was the highest at Chanco Obi (Bezabi 2006).

The Interaction of Factors Influencing Land Rentals

To examine the variety of factors that influence land rentals and their interaction, the multinomial logit model was used, according to the methodology described earlier and in Annex 1. The explanatory variables were selected from the results of descriptive statistics discussed above, to analyze the overall interactive effects of the variables in the decision of the farm households to participate in land marketing. The list of possible variables is given in Annex 2.

The model outputs revealed that age, sex, education level, number of oxen owned, total landholding, labour availability had significant influences on farm households' participation as lessees, while on the other hand the farmers participation lessors was influenced significantly by total family labour, distance from town, number of oxen, total land size and livestock income as shown in Table 6.8.

Age of the household head tended to have a negative relationship with the households' decision to participate as lessees, and this is significant at one per cent probability level; but this factor was not significant among the lessors. This implies that the households' participation in land transaction decreases with the age of the farmer, although this does not mean that it increases their participation as lessors. With drastically increasing population resulting in a larger number of young landless households, the demand for accessing land through land transaction will be crucial. Land redistribution by the government has only marginal room to assuage this need. The combination of the current land tenure policy and the demand for more land by young farmers are contradictory, and these need to be reconciled. Otherwise, this would lead to increasing pressure for further land reform in Ethiopia.

The coefficient of the sex of the household head has shown a positive, strong and significant relationship, with participation as lessees, but an insignificant relationship for lessors. This implies that male-headed households tend to participate farmland lessees. But being a female-headed household does not necessarily lead to land lease out as it was found to be an insignificant relationship. This shows that the gender imbalance would be worsened by the land transaction and women need special institutional support to cope.

Table 6.8: Determinants of Participation in Different Types of Land Marketing

Variables	Lessees		Lessors	
	Coefficient	t-value	Coefficient	t-value
Constant	-1.79561	-2.037***	-1.01476	-0.232
Age	-0.05367	-3.404***	0.01627	1.194
Sex	1.31565	2.047***	0.46365	1.085
Education level	0.73982	3.545***	0.14365	0.638
Total family (ME)	0.03960	0.594	-0.29111	-3.280***
Distance	0.00079	0.423	-0.36245	-1.627*
Oxen	0.78288	5.882***	-0.30644	-1.984*
Irrigation area	-0.00383	-0.064	-0.02210	-0.462
Total land	-0.04996	-1.972**	0.79398	3.185***
Livestock income	-0.00013	-0.554	0.00110	1.882*
Crop income	-0.00001	-0.243	-0.00002	-0.513
Credit 06	-0.00015	-0.292	0.00065	1.185
Credit 05	-0.00022	-0.335	-0.00106	-1.476
Labor availability	0.78987	2.489***	0.33835	0.982
Log likelihood function	-271.6680			
Restricted log likelihood	-361.2576			
Chi-squared	179.1793***			
Valid case	347			

Source: Own survey (2006)

Education level of the household head affects positively the farmers’ participation as lessees, and this is significant at one per cent probability level. The probable explanation is that those households are either more efficient in employing factors of production or they may be the youngest groups that could not get access to sufficient land size from local government.

The family size in man equivalent is found to have a negative effect on participation as lessees, and it is significant at less than one per cent for participation as lessors. This implies that households with sufficient labour do not tend to lease their land out. But having a large labour force does not necessarily lead to participation as a lessee. The implication is that due to the dominantly informal land transaction, the rental value seems to be undervalued and hence participation as a lessee is more profitable than as a lessor.

The distance of households' location from the town has shown significant but negative effect on participation of households as lessors of land. This implies that the households near towns tend to lease their land out more than those located far away from the towns. Several peri-urban farmers are leasing out their land to those attempting to use the land for non-agricultural purposes. Such farmers get relatively higher prices, but this may be smaller than the real rental cost since the transaction is not formal.

Ownership of oxen has a positive and strongly significant (at one per cent probability level) effect on households' participation as lessees, while it influences participation in leasing out negatively, and this is significant at 10 per cent probability level. This means having oxen has significant influence on households' participation in land marketing. On the one hand, it increases households' participation as lessees significantly, while, on the other hand, it decreases their participation in leasing out.

Land availability affects the participation of lessors positively and significantly but affects the lessees negatively, which show that those with enough landholdings do not want to participate as lessees.

Income from livestock products showed a positive effect on households' participation in leasing out land but not as lessees. The livestock products that are used as income sources for farm households are usually milk and milk products and others of small ruminants like hides and skins. So the possible explanation for the relationship is that these households may not have enough traction power or may have a comparative advantage in other categories of livestock than oxen, such that they lease their land out and tend to supplement their crop production by other incomes.

Labour availability is found to have strong influence on the probability of the households' participation as lessees, and this is significant at one per cent probability level. Here it is important to note that households' labour supply does not depict a significant relationship with participating as a lessee. This implies that it is the labour market rather than family labour that influences the participation of farm households as lessees. On the contrary, the households' participation in leasing out land is influenced by the family labour supply.

Conclusion

The results of the study show that there has been an increasing trend of land marketing participation over the last five years both in terms of the proportion of the participants in land transactions, as well as the area transacted per household in a given year. The rate at which this trend increased also seemed high in areas near the towns. This emphasizes the differential value of land rental prices in relation to location. Leasing was also found to have a positive relationship with access to credit and the labour market.

The results of econometric analysis show that there are several causes of the emerging land transaction. Unequal distribution of land for agricultural production is a major one. The Ethiopian government has maintained a firm stand on public/state ownership of land, although this limits land transactions. On the other hand, there is increasing demand for land among the young farmers. The potential of conflict between the demand for land to enable the growing population of young farmers to maintain themselves and the legal framework that tends to limit access to land looms large over Ethiopia. Oxen and land holding have been identified to have huge effects on participation in lease markets, such that oxen increase the possibility of households engaging as lessees of land.

Policy-makers should consider these patterns of emerging land marketing and the forces which drive them, in order to promote increased land transaction and total factor productivity.

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Annexes

Annex 1: Analytical Model

Participation in land marketing is defined as an unordered choice available to households. The choices are the types of land transaction available to maximize the utility gained from their participation in land marketing. For instance, a household chooses alternative 1 to 2 if $U_1 > U_2$ (Long, 1997), where U represent utility. Let the random utility function be a combination of non-stochastic and random term components.

$$U_{ij} = V_{ij} + \varepsilon_j \quad \text{-----} (1)$$

where i refers to the i th individual j refers to the j th alternative, V_{ij} a non-stochastic utility function while ε_{ij} is random term.

$$U_{ij} = \beta_j' X_i + \varepsilon_i \quad \text{Where } j = 0, 1, 2 \dots K. \quad \text{-----} (2)$$

where K is the possible outcomes, X is a vector of explanatory variables, β_j' is a vector of parameter estimate associated with the choice outcome j .

An obvious econometric model to handle the utility maximization choices of more than two categories of dependent variables is a multinomial logit model. In this model suppose Y is the dependent variable, such that $j=0$ if the household do not participates in any form of land marketing, $j=1$ if the household participates in lease in either on rent or sharecropping basis, and $j=2$ if the household participates in lease out, then, $Y_i=1$ if $Y_i=j$, $Y_i=0$ otherwise. This helps to express the probabilities in binary form. Let P_{i1} , $P_{i2} \dots P_{ik}$ be the probability associated with the choice of j th categories. Then,

$$\frac{P_{i1}}{P_{i1} + P_k} = f(\beta_j' X_i) \quad \text{This implies that} \quad \frac{P_j}{P_k} = \frac{f(\beta_j' X_i)}{1 - f(\beta_j' X_i)} \quad \text{-----} (3)$$

The probability of households to choice of alternative 1 is given as

$$\frac{P_{i1}}{P_k} = \frac{f(\beta_1' X_i)}{1 - f(\beta_k' X_i)} = e^{\beta_1' X_i} \quad \text{where } j = 1, 2 \dots k-1. \quad \text{-----} (4)$$

$$\sum_{j=1}^{k-1} \frac{P_j}{P_k} = \frac{1 - P_k}{P_k} = \frac{1}{P_k} - 1, \quad \text{then,} \quad P_k = \frac{1}{1 + \sum_{j=1}^{k-1} e^{\beta_j' X_i}} \quad \text{-----} (5)$$

According to Maddala (1983), the probability of the *i*th household to participate in lease in (*Y_i* =1) is given as:

$$P(Y_i = 1) = \frac{e^{\beta_1'X_i}}{1 + e^{\beta_0'X_i} + e^{\beta_2'X_i}} \text{-----(6)}$$

The maximum likelihood was employed to estimate the multinomial logit model. The variables used in the model are defined in Annex 2.

Annex 2: Definition of Variables Included in the Model

Code	Description
Age	Age of household head expressed in years
Sex	Sex of household head; dummy 1= male 0=female
Education level	Household head education level; categorical variable, illiterate=1, informal/basic education=2, formal education =3
Total family (ME)	Family size in man equivalent
Distance	Distance of household from town in minutes
Oxen	Number of oxen owned per household
Irrigation area	Irrigated area per household in hectares
Total land	Total land holding in hectares
Livestock income	Income from livestock and livestock products in Ethiopian Birr (ETB)
Crop income	Income from crops in ETB
Credit 06	Amount of credit received in 2005/06 in ETB
Credit 05	Amount of credit received in 2004/05 in ETB
Labor availability	If the household can get hired labour in need; dummy, yes=1, No=0

Réforme agraire et valeur économique de la terre au Burkina

Zonon Abdoulaye

Problématique

Le Burkina est un pays agricole et plus de 80 pour cent de sa population vit de l'agriculture dont la contribution au PIB est relativement faible (35% du PIB en moyenne). Le système agricole dominant est l'agriculture de subsistance dont la particularité est d'être extensive et grande utilisatrice d'espace cultural. Plus de 3 millions d'hectares de superficie pour une production moyenne de 2,6 millions de tonnes. La pression démographique et les mauvaises méthodes de conservation des sols et de l'environnement font aujourd'hui que les terres fertiles s'amenuisent et cela crée une pression énorme sur la terre, entraînant ainsi divers types de conflits. Les superficies cultivables, qui étaient de 39 pour cent dans les années 1980, sont passées à 32 pour cent en 2000. Cependant, le potentiel de terres irrigables est important : il est de 164 460 hectares et seulement 45 730 hectares sont irrigués, soit environ 27 pour cent.

Les cultures vivrières, qui occupent la plus grande partie des terres cultivées, n'ont pas connu d'augmentation sensible en matière de rendements depuis les indépendances. Par exemple, jusqu'à présent, le sorgho et le mil, qui représentent plus de 80 pour cent des céréales produites, n'arrivent pas à atteindre la tonne à l'hectare : 974 kg/ha pour le sorgho et 713 kg/ha pour le mil.

La cause de cette situation serait, selon les autorités, fortement liée à la gestion foncière qui, dans bien des cas, précarise la situation des paysans-utilisateurs de la terre. Pour ce faire, l'Etat du Burkina Faso a adopté un programme de

Réforme Agraire et Foncière [RAF] pour sécuriser les producteurs agricoles et leur permettre de mieux gérer leurs terres. Il est attendu de cette RAF, dont la première mouture date de près de deux décennies, qu'elle permette aux paysans de procéder à des investissements garantissant un entretien et une gestion durable de leurs terres (gouvernement du Burkina Faso 1993). Ainsi, les individus ou les familles qui se voient octroyer un droit de propriété sur certaines terres seraient incités à maîtriser la dégradation des sols, ou mieux, pourraient contribuer à inverser le phénomène de la dégradation des sols par des actions de restauration.

Dans la pratique, la RAF connaît toujours un problème d'application en dépit des multiples relectures pour la rendre plus opérationnelle. La pierre d'achoppement des textes de cette réforme réside toujours dans une disposition qui stipule que la terre appartient à l'Etat. Cette disposition s'oppose aux principes de la gestion traditionnelle de la terre, régie par les coutumes ancestrales qui, dans leurs formes originelles, ne reconnaissent pas explicitement la propriété privée de la terre. Historiquement, le système foncier a connu une évolution depuis l'indépendance jusqu'à nos jours. Selon la chronologie faite par Tallet, Sanou et Balac (2001), jusqu'en 1970, on a eu à faire à un système d'accès négocié au foncier dans lequel la terre constitue un bien commun inaliénable et il n'est pas question de propriété individuelle de la terre. Le contrôle du foncier dans la plupart des régions était entre les mains des chefs de terres¹ et le droit d'usage du sol était gracieusement accordé par ceux-ci aux migrants et aux autres allogènes. De 1970 à 1985, le contrôle du foncier échappe progressivement aux chefs de terres qui, d'une manière ou d'une autre, n'arrivent plus à contrôler les attributions foncières qui sont faites par certains membres du lignage ne détenant auparavant une telle prérogative. C'est dans cette ambiance qu'intervient la RAF en 1984, marquant une tentative de réglementation du système foncier par l'Etat.

De 1985 à nos jours, on assiste à une véritable fermeture de l'accès à la ressource terre. Le contrôle de la terre glisse au sein des familles de base. De nouvelles pratiques foncières, des locations et retraits, voire la vente de terres apparaissent. Il s'ensuit des conflits fonciers ; par exemple des revendications des premiers occupants qui s'opposent au droit d'usage des migrants et éleveurs de la terre.

Dans ce contexte, il était difficile à la RAF de connaître un début d'application et, du reste, elle était entachée de plusieurs lacunes. Un point qui a souvent été évoqué est le penchant trop prononcé de la RAF de chercher, à tout prix, à sécuriser les exploitants de la terre (ceux qui ont un droit d'usage) sans tenir compte du fait qu'ils soient propriétaires traditionnels ou pas. Dans beaucoup de cas, des autochtones ou des propriétaires ancestraux qui estiment avoir des droits de propriété ou de contrôle sur des terres voient à travers la RAF une tentative de les exproprier des terres de leurs ancêtres. Il apparaît alors un conflit qui résulte de la juxtaposition de deux droits et de points de vue contradictoires entre l'Etat

et les communautés rurales. En plus de cela, l'Etat n'avait ni les moyens matériels ni humains et financiers d'imposer l'application de la RAF.

C'est pour cette raison que jusque-là, le problème d'application de ces textes demeure entier et a peu de chance d'aboutir si des dispositions ne sont pas prises pour préserver les intérêts des différents acteurs. Du reste, en 2006, le gouvernement a reconnu même les limites de la RAF et proposé une Politique Nationale de Sécurisation Foncière en Milieu Rural (PNSFMR) qui doit s'appuyer sur un processus de dialogue politique destiné à faire émerger des consensus fonciers nationaux. Nous sommes alors à la croisée des chemins où des propositions crédibles doivent être faites pour alimenter ce nouveau processus.

Une des pistes valables qui n'a pas encore été expérimentée est peut-être le système de valorisation adopté en économie de l'environnement. Cette approche considère que plusieurs valeurs sont associées à toute ressource naturelle, y compris la terre. Il s'agit de la valeur d'usage direct, de la valeur d'usage indirect, de la valeur d'option, de la valeur patrimoniale et de la valeur d'existence. Et c'est en partie la non prise en compte de la valeur patrimoniale qui est la source principale de blocage de la réforme. Avant de développer ces différents points, il est utile de dire ce que recouvre le concept « valeur » pour une ressource comme la terre.

La valeur en économie

Au Burkina Faso, dans la plupart des cas, il n'y a pas de marché de la terre en milieu rural. Plusieurs attributs sont conférés à la terre de sorte que, dans certains milieux, il ne serait pas indiqué de parler de vente de la terre. Il est, en effet, habituel de considérer que la terre appartient aux ancêtres, que son droit de propriété est détenu depuis l'au-delà et que les vivants n'ont qu'un droit d'usage de celle-ci. Les vivants sont ainsi chargés de préserver ce bien qui ne leur appartient pas. Mais cette conception de la gestion de la terre entre de plus en plus en conflit avec la pratique, sans pour autant que les éléments actuels du marché permettent une monétarisation directe de la terre par la présence d'un marché de celle-ci.

Dans ces conditions, comment peut-on parler de valeur marchande de la terre ? La compréhension du concept « valeur » en économie peut aider à mieux élucider la problématique. Pour les économistes, la valeur d'un bien est liée à sa rareté relative. Cela veut dire que les biens ou services abondants que l'on peut consommer à sa guise n'ont pas ou ont peu de valeur économique, même s'ils jouent un rôle important en tant que support de la vie. L'air pur, par exemple, n'a pas de valeur économique tant que tout le monde y a libre accès. Dès lors que cette disponibilité est limitée, une valeur économique potentielle apparaît parce que l'air est devenu rare. Si l'air est pollué, les individus manifestent leur préférence à une meilleure qualité de l'air. A partir de ce moment-là, ils sont disposés à dépenser pour avoir accès à de l'air pur.

La valeur des terres agricoles

Pour les économistes libéraux, la valeur de la terre tout comme celle des autres biens résultent de l'interaction entre l'offre et la demande. Cependant, en raison de la fixité de l'offre de la terre, il y a des différences entre la formation du prix de la terre et celle des autres biens. Pour les biens autres que la terre, les prix, régulés par la concurrence, dépendent des coûts de fabrication et de commercialisation, des quantités vendues, du nombre de clients intéressés et solvables compte tenu de ces coûts. Si, pour une raison quelconque, il y a davantage de demandeurs, les offreurs y répondront par une augmentation de la production. Il peut en résulter vraisemblablement une diminution des prix. Dans le cas particulier du marché de l'espace, c'est quasiment le contraire qui s'observe : c'est la compétition que se livrent les acquéreurs potentiels d'un espace donné qui déterminent sa valeur. La valeur de l'espace ne se forme pas comme, dans bien des cas, du côté de l'offre, mais du côté de la demande. Cette valeur résultera de l'actualisation des valeurs ajoutées espérées par leur mise en production, donc, à la fois, des prix attendus des produits agricoles, des coûts de production et du prix de l'argent (Comby 1997).

Dans beaucoup de cas, cette vision de la valeur de la terre est inopérante parce qu'elle ne concerne que la valeur d'usage, car ne prenant pas en compte d'autres valeurs que recouvre la terre si on la considère comme une ressource naturelle.

Valeurs liées aux biens environnementaux et aux ressources naturelles

Les valeurs des ressources naturelles peuvent être décomposées en cinq types de valeurs selon le type d'utilisation (Munasinghe 1992). On distingue :

- la valeur d'usage direct : c'est la valeur tirée directement de l'usage de la ressource. Dans le cas d'une forêt, il peut s'agir de l'alimentation, de la biomasse, de la récréation, et des plantes curatives, etc. Pour une terre, cette valeur concerne les valeurs des produits directement exploitables de cette terre comme les récoltes ou le pâturage ;
- la valeur d'usage indirect : cette valeur vient de l'avantage fonctionnel de la ressource naturelle. Elle est liée au processus de biodiversité impliquant la ressource en question. Pour certaines ressources, il s'agit de la régulation climatique, de la protection des sols et des interactions écologiques, mais en général pour la terre, les valeurs d'usage indirect ne seront effectives que pour les terroirs situés dans des zones humides (navigation, par exemple) ou ceux qui participent à la protection des autres terroirs riverains ;
- la valeur d'option : ce sont les valeurs directes et indirectes placées sur des utilisations futures possibles de la ressource.

En dehors des valeurs qui sont liées à l'usage, les individus peuvent attribuer une valeur aux éléments du patrimoine même s'ils n'en font aucun usage direct ou indirect, voire s'ils n'y attachent aucune valeur d'option. Ces valeurs sont :

- la valeur patrimoniale : elle découle du désir que les individus ont à transmettre un patrimoine à une génération future ou à leurs descendants (héritage, legs). C’est donc cette valeur qui est importante dans le cas des terroirs ruraux où la terre des ancêtres a une valeur du fait même qu’elle fait partie du patrimoine qui a été légué à ses propriétaires traditionnels ;
- la valeur d’existence : valeur intrinsèque attribuée à un bien environnemental du simple fait de savoir qu’il existe. Les écologistes sont, par exemple, heureux du fait même de l’existence de certains animaux rares ou de certains processus de biodiversité, quand bien même ils n’auraient pas un bénéfice direct de leur existence. Ils accordent à ces biens une valeur d’existence qui, dans certains cas, est très importante, mais pour une terre, cette valeur est presque nulle.

La décomposition de la valeur économique en ces différentes valeurs permet de mieux distinguer les différentes motivations des acteurs en rapport avec la problématique foncière et les conflits qui peuvent en résulter. Par exemple, les paysans pauvres riverains d’une forêt classée sont surtout intéressés par sa valeur d’usage direct. Ils se soucient très peu de sa valeur d’option, d’existence ou patrimoniale. En ce qui concerne les terres, le gouvernement et certains utilisateurs (allogènes ou non propriétaires traditionnels) se focalisent sur la valeur d’usage direct de la terre, oubliant que pour certaines personnes (autochtones ou propriétaires), les terres ont une valeur patrimoniale.

Le tableau 7.1 indique que pour la terre, toutes les autres valeurs sont plus ou moins négligeables sauf la valeur patrimoniale.

Tableau 7.1 : Les différentes valeurs d’une terre

Type de valeurs	Estimation	Remarque
Valeur d’usage direct	***	Moyenne
Valeur d’usage indirect	*	Faible ou nulle
Valeur d’option	*	Faible ou nulle
Valeur patrimoniale	*****	Très élevée
Valeur d’existence	--	Nulle

Source : L’auteur

La RAF doit tenir compte de cette valeur pour avoir plus de chance de succès. En accordant à un individu le droit de propriété sur une terre dont il n’a pas le droit de propriété traditionnel, on lèse, du même coup, les titulaires du droit traditionnel. Il y a des risques de résistance ou d’opposition à toute mesure tendant à légitimer les exploitants, comme c’est le cas avec la RAF. Mais l’attachement des titulaires du droit traditionnel à une terre vient du fait qu’ils lui accordent une valeur patrimoniale substantielle. Les déposséder de ces terres, c’est leur faire

perdre l'équivalent monétaire de cet attachement. On peut bien imaginer que les résistances à toute aliénation de leur droit de propriété seront moindres s'ils sont dédommagés de la valeur monétaire de cet attachement.

Certaines personnes seront sceptiques quant à la possibilité d'estimer la valeur patrimoniale de la terre, mais l'économie de l'environnement offre plusieurs possibilités d'estimations de ces types de valeurs basées sur les éléments du concept « valeur » que nous avons indiquée plus haut.

Le succès de la RAF au Burkina Faso dépendra étroitement de la prise en compte de ce facteur et en ne perdant pas de vue les intérêts des détenteurs du droit traditionnel. Il s'agira alors de prévoir la possibilité d'indemniser ces détenteurs du droit traditionnel.

L'objectif général de cette étude est d'amener un nouvel éclairage sur la mise en application de la Réforme Agraire et Foncière.

Les objectifs spécifiques suivants seront visés :

1. faire une typologie du droit patrimonial de la terre selon les régions du Burkina ;
2. estimer la valeur d'usage direct de la terre (valeur des produits issus de la terre) ;
3. estimer la valeur patrimoniale de la terre ;
4. faire des recommandations de politiques économiques pour une meilleure application de la Réforme Agraire et Foncière.

Revue de la littérature

La littérature sur les problèmes agraires et fonciers est assez abondante et traduit la préoccupation que cette question a toujours occupée dans les politiques de développement rural. Cette littérature est multidisciplinaire et touche aussi bien l'économie, le droit que l'anthropologie et la sociologie. Toutefois, dans cette étude, sans ignorer les autres disciplines, les analyses auront un fort ascendant économique.

Les fondements théoriques de la Réforme Agraire et Foncière

La Réforme Agraire et Foncière, pour plusieurs raisons aussi bien d'éthique que d'efficacité, a été souvent préconisée comme un moyen de promouvoir le développement agricole. Pour Schultz (1964), Griffin (1974) et Lipton (1974), la redistribution de petites exploitations permettait une intensification de l'utilisation du travail qui est sous-utilisé dans le cadre des grandes exploitations. En outre, le problème de l'accès au crédit et à certains intrants était réglé grâce à la possibilité que les paysans avaient de gager leurs titres fonciers. Ces facilités permettaient aux petites exploitations d'être plus efficaces que les grandes. Un tel processus avait pour avantage d'introduire les paysans dans un système de marché plus prometteur qui pouvait entraîner la croissance du secteur agricole.

De ce fait, la Réforme Agraire et Foncière devenait une étape essentielle du développement économique. C'est certainement pour cette raison que de telles approches théoriques ont eu du succès auprès des institutions internationales comme la Banque Mondiale (World Bank 1974). Cependant, la réforme foncière ne se justifie vraiment que s'il y a, d'une part, de grands espaces agricoles non utilisés et, d'autre part, de nombreux paysans sous-employés qui n'arrivent pas à travailler du fait du manque d'accès à la terre. Si ces conditions ne sont pas réunies, la réforme agraire aura très peu d'impact sur le développement.

Le contexte de la plupart de ces études était l'Amérique latine ou l'Asie, où il y avait des millions de paysans sans terre, d'où la nécessité d'une redistribution de la terre. En dehors de certains pays de l'Afrique australe où la décolonisation a laissé de vastes domaines entre les mains d'une minorité blanche, le contexte africain est bien différent. Le problème de la redistribution des terres ne se pose pas en tant que tel, mais la crise foncière n'en est pas moins grande. Elle apparaît de plus en plus en termes de sécurisation des droits des différents groupes d'usagers de la terre et de renforcement des modes de gestion intercommunautaires des ressources communes (Bonnet 2000).

Les régimes fonciers et agraires en Afrique et leur évolution

Dans bien des pays africains, le régime foncier traditionnel considère la terre comme un bien commun, un patrimoine de la communauté. La terre constitue un bien inaliénable et il n'est pas question de propriété individuelle (Beloncle 1982). L'organisation et le contrôle sont entre les mains des chefs de terre qui sont, en général, les autorités coutumières issues des premiers occupants, et le droit d'usage est organisé au sein des lignages ou des familles.

Cette organisation a connu de nombreuses mutations qui continuent actuellement sous des aspects parfois conflictuels. Le point critique de départ de ces transformations a été la colonisation, avec l'introduction du droit moderne qui a bouleversé la gestion traditionnelle de la terre en la mettant à la marge ou en combattant les structures ancestrales taxées d'être rétrogrades. Cependant, dans la pratique, même avec les indépendances, le droit moderne, dans la plupart des cas, s'est très peu concrétisé sur le terrain puisque les populations n'y ont pas adhéré et les Etats n'ont pas eu le moyen de le mettre en œuvre, comme l'a souligné Ouédraogo (2000) pour le Burkina Faso. En plus de sa superposition au droit traditionnel, il y a plusieurs autres facteurs qui viennent changer le paysage de la gestion foncière traditionnelle. Il s'agit aussi bien des questions économiques, environnementales que des changements des structures sociales.

La forte croissance démographique et les migrations liées à une agriculture peu efficace et peu soucieuse de la durabilité environnementale ont créé de grandes pressions sur les terres. Bien que les régimes fonciers africains se caractérisent par la reconnaissance d'un droit d'usage aux différents groupes sociaux, ils ne se

distinguent pas forcément par leur égalitarisme (Lund 2001). Il existe une grande variété de tenures en Afrique qui ne correspondent pas au souhait actuel de beaucoup de paysans à cause de l'insécurité foncière qu'elles peuvent engendrer (Shipton et Goheen 1992 ; Bruce et Migot-Adholla 1994). Cette insécurité foncière, qui est la possibilité de perte du droit d'usage ou du droit de propriété par un utilisateur d'une terre ou l'impossibilité de transmettre ou transférer ces droits à ses ayants droit, est actuellement perçue comme une des difficultés de l'intensification des systèmes de production à travers des investissements productifs (Platteau 1996). Il existe des ménages qui ont des droits d'usage, du reste plus ou moins précaires, sans avoir le droit de transférer leurs terres. Cela fait que de nombreux ménages réclament alors plus de sécurité foncière et leur revendication est facilitée par les nouvelles structurations sociales qui affaiblissent les prérogatives des chefs de terres et des autres régulateurs du droit traditionnel.

Sur le plan des analyses théoriques, beaucoup d'idées reçues sur les questions foncières sont en train de connaître une évolution. Des auteurs soutenaient que la propriété privée n'était pas africaine. Par exemple, pour Le Roy, Karsenty et Bertrand (1996), la terre, étant donné ses attributs (lien avec les ancêtres et sacralité), ne peut être vue que comme un patrimoine commun. Ils considèrent alors la gestion communautaire de la terre comme l'option la plus pertinente de développement. De tels points de vue ont servi de justification aux grands projets de « gestion des terroirs » qui ont été mis en œuvre dans plusieurs pays d'Afrique de l'Ouest (UNSO 1994).

Les faits semblent infirmer ces analyses ; des processus de privatisation sont en cours dans de nombreuses régions d'Afrique et ceux-ci vont de pair avec la montée de l'individualisme (Shipton 1989). L'étude de Zonon (2001) sur les déterminants du consensus dans la « gestion des terroirs » au Burkina Faso montre qu'un des éléments clefs du consensus est le bénéfice individuel tiré de l'application du programme et non le bénéfice communautaire.

Marché de la terre et réforme agraire

Pour des économistes libéraux, l'utilisation communautaire de la terre ne permet pas l'exploitation optimale qu'entraînerait une possession privée. Il faut alors encourager les droits de propriété privée à travers un marché de la terre qui est un intrant agricole comme tout autre, soumis à la dynamique de l'offre et de la demande permettant de fixer un prix de marché auquel les échanges seraient possibles. Toutes les situations ne sont pas forcément propices à un marché de la terre, à cause d'un certain nombre d'imperfections économiques. Dans des cas où les autres marchés seraient incomplets, la vente de la terre ne conduit pas forcément à une utilisation plus productive. Dans de telles conditions, l'individualisation des droits de propriété que permet le marché peut être doublement désavantageuse. D'une part, elle peut entraîner l'émergence d'un marché de terres qui va entraîner

l'impulsion de la cohésion sociale (qui permettrait une solidarité), sans pour autant apporter suffisamment de bénéfices. D'autre part, elle n'entraîne pas nécessairement la productivité puisqu'une minorité de personnes nanties s'adjudge la plus grande partie de ces terres dans un but spéculatif (Balan et Platteau 1998).

Dans tous les autres cas, il est préférable et économiquement plus efficace de faire les réformes agraires à travers le marché. Ces propositions venaient dans un contexte où la plupart des réformes agraires ont été opérées par l'Etat et les critiques faites par les partisans d'un marché de la terre étaient axées sur le fait que les résultats obtenus étaient mitigés alors que les coûts étaient énormes. Dans beaucoup de cas comme au Nicaragua, les pauvres sans terre ont été exclus des réformes au profit de personnes plus aisées ayant un poids politique plus important (Deininger 2000).

Les réformes agraires, dans ces conditions, peuvent se faire dans le cadre du marché en facilitant les conditions de ventes négociées de terres. Ces politiques ont été encouragées par la Banque Mondiale dans plusieurs pays d'Asie et d'Amérique latine. Des banques et autres institutions financières accordent des prêts aux paysans pour acquérir des terres et les dettes sont amorties à travers les bénéfices des exploitations agricoles qui, dans ces conditions, deviennent plus performantes. Des pays comme la Corée du Sud ont connu un succès dans cette pratique puisque dans leur réforme agraire et foncière, la plupart des terres ont été acquises à travers le marché (Deininger 2000).

La plus grande partie de l'Afrique au sud du Sahara se trouve dans la situation d'imperfection des marchés et, pourtant, apparaissent des marchés de la terre même si ceux-ci sont, pour le moment, embryonnaires.

Le marché de la terre au Burkina Faso

Au Burkina Faso, plusieurs études montrent des mutations vers un marché de la terre. Mathieu *et al.* (2003) signalent de nombreux cas de ventes de terres dans l'ouest du Burkina qui est également la zone de culture par excellence du pays. Les vendeurs sont le plus souvent des jeunes autochtones qui revendent l'appropriation des terres familiales et/ou lignagères et sont désireux d'investir dans de nouvelles activités ou d'acquérir certains biens matériels. Ce sont aussi des aînés voulant faire face à des problèmes ponctuels. Les acheteurs, sont pour la plupart, des commerçants, des entrepreneurs, des hommes politiques et des migrants disposant de revenus importants. Lund (2001) rapporte de tels faits dans le nord du Burkina chez les Foulbés.

Ces pratiques se font en marge de la loi, elles sont tolérées sans qu'il n'y ait une base légale. Pour le moment, il est peu probable qu'un véritable marché de la terre s'installe au Burkina à cause de multiples facteurs dont le poids des traditions qui a pour conséquence d'augmenter l'attachement des paysans à leur terre, et cela amplifie la valeur patrimoniale de celle-ci.

Mais pour le moment, aucune étude n'aborde la question dans le sens de cette valeur au Burkina Faso. Il serait intéressant d'envisager une telle hypothèse surtout au moment où la Réforme Agraire et Foncière connaît un blocage et a besoin d'analyses et d'approches novatrices.

Méthode de recherche

Zone d'étude

Les données qui sont utilisées pour cette étude ont été obtenues à la suite d'une enquête à passage unique dans le centre du pays dans la province du Bazèga. Cette province se situe à une cinquantaine de kilomètres de la capitale du Burkina, Ouagadougou.

Choix de l'échantillon

Les enquêtes ont été faites dans 8 villages par choix raisonné. Nous avons considéré 2 strates : les migrants et les autochtones. L'unité d'observation était les chefs d'exploitation et dans chaque village, 25 ont été enquêtés. Leur choix est fait de façon aléatoire et dans chacun des villages, 12 à 13 chefs d'exploitation migrants et autochtones ont été sélectionnés. Au total, 200 chefs d'exploitation ont été enquêtés et des données quantitatives et qualitatives ont été recueillies.

Les données quantitatives concerneront la taille des exploitations, les niveaux des revenus agricoles et extra-agricoles, les niveaux de production, la taille des ménages et les gains espérés dans le projet. Les données qualitatives concerneront les variables socioéconomiques comme l'attitude face au projet (approbation ou pas), le niveau d'éducation, le sexe, l'origine sociale (autochtones ou migrants), le statut social (notable ou paysan), l'activité principale, le type d'agriculture pratiquée, le niveau de responsabilité dans la famille, le niveau de responsabilité dans le village (leader ou pas), etc.

Modélisation

Le modèle suivant nous permettra de calculer la valeur patrimoniale de la terre. Nous sommes dans une situation où il n'y a pas de marché de la terre. La terre est considérée comme une ressource naturelle à cause des différentes fonctions qu'elle remplit. Il y a deux groupes de paysans : ceux qui sont propriétaires de leurs terres grâce à un droit patrimonial séculaire et les autres, c'est-à-dire ceux qui, d'une manière ou d'une autre, sont en train d'utiliser des terres dont le droit ancestral est détenu par d'autres paysans. Les paysans non propriétaires sont désireux de devenir propriétaires en rachetant le droit de propriété patrimonial aux détenteurs de celui-ci. Le paysan est conscient du fait qu'il peut vendre sa terre, mais il faut au moins que le prix de celle-ci avoisine la valeur d'usage directe de la terre plus sa valeur patrimoniale.

Selon le prix qui lui est proposé, le paysan a deux possibilités : vendre ou ne pas vendre. Tout dépend du niveau d'utilité qu'il peut avoir et ce niveau est fonction de son revenu, de l'accès au « bien » et d'autres caractéristiques propres (âge, sexe, éducation, religion, etc.). Soit y le revenu, j une variable qualitative valant 1 ou 0 selon que l'individu accepte ou pas le prix proposé, et s le vecteur de ses caractéristiques socio économiques. Nous estimons que, même si l'individu connaît sa fonction d'utilité, cette dernière contient des composantes inobservables qui seront traitées, dans les manipulations économétriques, comme aléatoires. L'utilité (U) est donc perçue comme fluctuant autour de sa moyenne (V), ces fluctuations se faisant suivant un résidu aléatoire (e) de moyenne nulle. Nous notons donc:

$U(y,1;s) = V(y,1;s) + e_1$: niveau d'utilité due à la disposition du « bien » ;

$U(y,0;s) = V(y,0;s) + e_0$: niveau d'utilité due à la privation du « bien ».

Le paysan migrant consentira à payer un montant (A) pour devenir propriétaire de la terre qu'il utilise si le niveau d'utilité qu'il en retire est supérieur à celui induit par sa privation, i.e.:

$$U(y - A, 1; s) > U(y, 0; s) \quad (1)$$

ou encore:

$$V(y - A, 1; s) - V(y, 0; s) > e_0 - e_1 \quad (2)$$

La partie droite de (2) étant aléatoire, nous sommes amenés à considérer la probabilité que l'individu consente à payer le montant (A):

$$P(A) = \text{proba} \left\{ (e_0 - e_1) < V(y - A, 1; s) - V(y, 0; s) \right\} \quad (3)$$

Nous supposons que la variable aléatoire ($e_0 - e_1$) suit une loi logistique, et que la partie déterministe (V) est quasi linéaire et séparable [i.e. $V(y, j; s) = a_j(s) + b(s) \cdot y$, où $b(s) > 0$]. Hanemann (1984) note que c'est la seule spécification qui ne puisse pas faire apparaître l'effet revenu [hypothèse utile pour quantifier des variations hicksiennes du bien-être (Laffont 1982)]. Ce qui permet d'écrire la relation (3) comme suit :

$$P(A) = \text{proba} \left\{ \eta < [a_1(s) - a_0(s)] - b(s)A \right\} = F_\eta \left\{ [a_1(s) - a_0(s)] - b(s)A \right\} \quad (4)$$

où, $\eta = (e_0 - e_1)$ et $F_\eta \{\bullet\}$ est la fonction de répartition de η . On a [voir Gourieroux (1984 : 17)]:

$$F_\eta(Z) = \frac{I}{I + \exp(-Z)} \quad (5)$$

Tout ce qui précède prépare à l'utilisation de la régression Logit (voir Maddala (1983), Cramer (1991) ou Gourieroux (1984)). Les montants (A) sont générés suivant une loi uniforme. Deux types de mesure du prix de réserve du « bien » sont possibles (Hanemann 1984): la médiane (A^*) et la moyenne (A^+) de la distribution des probabilités des prix de réserve. La médiane (plus robuste que la moyenne) est tirée de l'égalité :

$$P(A^*) = \text{proba}\{(e_0 - e_1) < V(y - A^*, 1; s) - V(y, 0; s)\} = 0.5 \quad (6)$$

La moyenne est donnée par (voir Adamowicz *et al.* (1993)) :

$$A^+ = \int_0^\infty \frac{I}{I + \exp[-(a - bA)]} dA \quad (7)$$

où $a = a_1(s) - a_0(s)$ et $b = b(s)$ ($b > 0$) sont estimés à l'aide d'une régression Logit de la probabilité de dire oui au montant (A) proposé par l'enquêteur. Cette relation (7) est démontrée plus loin.

De (4) on a $P(A) = F_\eta(\Delta V)$, où $\Delta V = [a_1(s) - a_0(s)] - b(s)A = a - bA$. D'où : $P(A) = \frac{1}{1 + e^{-(a-bA)}}$, ou encore $e^{-(a-bA)} = \frac{1 - P(A)}{P(A)}$; de sorte que $\text{Log}\left(\frac{1 - P(A)}{P(A)}\right) = -(a - bA)$; ce qui conduit à l'équation : $\text{Log}\left(\frac{P(A)}{1 - P(A)}\right) = a - bA \quad (8)$

Notons que le rapport $\frac{P(A)}{1 - P(A)}$ est celui de la probabilité d'un « oui » sur la probabilité d'un « non ». Il est clair que, b étant positif, plus A est élevé moins probable est le « oui » par rapport au « non ».

L'équation (7) s'obtient comme suit : si l'on note C le prix de réserve maximum d'un individu pour avoir le droit de propriété, on sait qu'il n'acceptera le montant A proposé que si $C \geq A$; la variable C étant traitée comme une variable aléatoire, puisque dépendant de l'utilité de l'individu, elle est une fonction dont des composantes sont inobservables. Donc, la probabilité d'accepter le montant A équivaut à la probabilité que C soit supérieur à A . D'où, en vertu de (3) :

$$P(A) = \text{proba}\{C \geq A\} = 1 - \text{proba}\{C < A\} = 1 - F_C(A) \quad (9)$$

où $F_C(\bullet)$ est la fonction de répartition de C . Les relations (4), (5) et (8) conduisent à : $1 - F_C(A) = P(A) = F_\eta(a - bA) = \frac{I}{1 + e^{-(a-bA)}}$ où : $a = a_1(s) - a_0(s)$ et $b = b(s)$ ($b > 0$) (10)

Par ailleurs, une relation statistique entre la moyenne d'une variable aléatoire C (positive ou nulle) et sa fonction de répartition est donnée par :

$$C^+ \equiv E(C) = \int_0^\infty (1 - F_C(A)) dA \quad (11)$$

où $E(C)$ représente l'espérance mathématique de la variable C . Enfin, (7) découle de (9) et (10), en notant que C^+ n'est rien d'autre que A^+ . Cette relation (7) donne le prix moyen que le non propriétaire est prêt à payer pour devenir propriétaire de la terre qu'il exploite. Après calculs, l'on obtient :

$$A^+ = \frac{a}{b} + \frac{\ln[1 + \exp(-a)]}{b} \quad (12)$$

S'agissant du consentement moyen à accepter ($\bar{A}$), nous obtenons l'expression suivante après calcul :

$$\bar{A} = \frac{1}{\beta} \ln(1 + e^{-\alpha}) \quad (13)$$

$\bar{A}$ représente la valeur d'usage directe de la terre chez les non propriétaires. Dans des conditions de concurrence pure et parfaite et dans un contexte de rationalité économique, cette valeur ne doit pas dépasser les bénéfices nets attendus de la terre.

A^+ représente la valeur d'usage direct et la valeur patrimoniale de la terre chez les propriétaires. $A^+ = \bar{A}_p + P$ (14)

Où $\bar{A}_p$ est la valeur d'usage chez les propriétaires et P est la valeur patrimoniale.

Il n'y a pas de raisons de penser $\bar{A}$ et $\bar{A}_p$ différent puisque les deux groupes occupent les mêmes types d'espace.

La différence entre les deux, c'est-à-dire

$$A^+ - \bar{A} = P \quad (15)$$

représente la valeur patrimoniale de la terre.

Limites de l'approche

Il y a plusieurs limites à la valorisation économique des biens et services environnementaux. La principale est la faiblesse de l'hypothèse de base de l'évaluation monétaire : toute préférence peut avoir un équivalent monétaire. Une telle approche est difficilement compatible avec des sociétés où les mécanismes marchands ne sont pas prédominants dans l'usage des ressources.

Des lors que l'on parle d'évaluation monétaire, on fait allusion à l'argent. Pour certains auteurs comme Simmel (1987), l'argent ne doit pas être seulement limité à ses fonctions économiques, mais il faut s'intéresser aussi aux éléments non économiques de l'argent comme, par exemple, le pouvoir qu'il donne. Aussi Simmel essaie-t-il de mettre en évidence les relations que l'utilisation de plus en plus importante de l'argent entretient avec les divers aspects de l'évolution de la société : les relations avec des phénomènes économiques comme l'échange, la valeur ou le niveau des prix, mais aussi des phénomènes sociaux comme la mode, l'essor de la liberté individuelle ou les relations de pouvoir entre individus ou encore avec des aspects culturels comme l'émergence de l'idée de personne ou bien psychologiques comme le type d'attitude que chacun développe à l'égard de l'argent.

Dans ces conditions, toute évaluation monétaire d'un bien qui n'a pas de prix comporte des incertitudes sur la signification monétaire de la valeur obtenue.

Résultats

Les résultats concernent aussi bien la présentation de quelques caractéristiques de la population enquêtée que l'estimation de la valeur patrimoniale de la terre.

Quelques caractéristiques de la population enquêtée

Il s'agit de paysans qui sont en fait des agropasteurs, tous de sexe masculin. Nous n'avons pas pu trouver dans la région un chef d'exploitation de sexe féminin. Jusque-là, la femme est exclue de la propriété de la terre et même dans le cas

d'emprunt, ce n'est pas directement à la femme que la terre est remise; c'est à son mari ou à d'autres éléments masculins de la famille.

L'âge des chefs d'exploitation varie entre 23 et 78 ans, avec une médiane de 48 ans. Les niveaux de revenu sont situés entre 69 600 et 1 845 000 FCFA, ce qui correspond à une moyenne d'environ 402 000 FCFA (cf. tableau 7.2). Le seuil de pauvreté au Burkina a été établi en 1998 à 72 690 FCFA, soit un revenu moyen par ménage de 465 216 FCFA. Cela veut dire qu'une partie importante des ménages de la région vit en deçà du seuil de pauvreté.

Tableau 7.2 : Age et revenu

	Minimum	Maximum	Moyenne	Médiane
Age	23	78	47,41	48
Revenu	69 600	1 845 000	402 863,01	310 000

Source : Données de l'enquête

Le tableau 7.3 indique que le niveau d'instruction des chefs d'exploitation de la zone de l'étude est faible. En effet, seulement 11,7 pour cent d'entre eux ont fréquenté l'école formelle. Plus de 40 pour cent sont analphabètes, 26,6 pour cent ont été alphabétisés en langues nationales et 21,3 pour cent ont fait l'école coranique. En général, ces derniers ne sont pas très différents de ceux qui n'ont eu aucun niveau d'instruction à cause du fait qu'en dehors des livres religieux, ils n'ont aucun support pour consolider les acquis qu'ils ont eus au cours de leur apprentissage de l'arabe.

Tableau 7.3: Niveau d'instruction des chefs d'exploitations

Niveau	Pourcentage
Analphabètes	40,4
Alphabétisés en langues nationales	26,6
Ecoles coraniques	21,3
Ecoles formelles	11,7
Total	100,0

Source : Données de l'enquête

Répartition des terres selon les origines sociales des chefs d'exploitation

La répartition des terres dans le plateau central burkinabé est toujours influencée par les origines des paysans. Ces origines peuvent être familiales ou être liées au statut de résidence (migrants ou autochtones).

L’origine sociale et la répartition des terres

La zone de l’étude fait partie du royaume Mossi qui est une société hiérarchisée. La détention de droits patrimoniaux sur les terres est en étroite relation avec la classe sociale du paysan.

- Nous avons regroupé les paysans en trois groupes ; il s’agit des paysans issus :
- de la classe royale que l’on appelle les Nakomsés, ils ont le pouvoir politique et sont les détenteurs de la chefferie traditionnelle ;
 - les chefs de terres qui sont les détenteurs des terres, c’est en fait les autochtones de la région, ils ont le pouvoir spirituel et sont chargés de tous les rites ayant trait à la terre ;
 - les autres regroupent aussi bien des paysans issus de familles d’artisans que de simples paysans et des immigrants ou des étrangers.

Le tableau 7.4 indique que ce sont les familles appartenant à la classe des chefs de terres qui ont les plus grandes superficies (21 hectares) ; cela se comprend bien puisqu’ils sont, d’une part, les détenteurs de la terre et, d’autre part, les familles royales ont perdu une grande partie de leur influence dans la gestion des dossiers fonciers. Ensuite, nous avons les membres des familles royales qui ont en moyenne 17 hectares. Les autres se contentent de 7 hectares en moyenne.

Tableau 7.4: Répartition des terres selon l’origine sociale des paysans

Origine sociale	Superficies détenues (en hectares)
Classe royale	17
Chefs de terre	21
Autres	7

Source : Données de l’enquête

Statut de résidence et répartition des terres

Une autre répartition possible des paysans est de les diviser selon leur statut de résidence (migrants et autochtones). On peut être de la classe royale ou de celle des chefs de terre tout en étant migrant. Dans ce cas, on n’a pas plus de privilège s’agissant de l’accès à la terre que les autres paysans. Le tableau 7.5 répartit les paysans selon leur origine (migrants ou autochtones). Il indique que les autochtones ont des superficies moyennes au moins quatre fois plus grandes que celles des migrants. Ces derniers n’occupent qu’environ 27 pour cent des terres, contre près de 73 pour cent pour les autochtones.

Tableau 7.5 : Répartition des terres selon le statut de résidence

Statut de résidence	Moyenne	% des superficies totales
Autochtones	25,10	72,68
Migrants	6,75	27,32
		100,00

Source : Données de l'enquête

La typologie des droits au Burkina

Plusieurs types de typologie sont possibles pour caractériser le mode de tenure au Burkina. Cependant, il nous a semblé simple de répartir les paysans dans les quatre groupes qui figurent dans le tableau 7.6. Selon cette répartition, dans la zone de l'étude, plus de la moitié des paysans opèrent sur des terres familiales (52,6%). Il n'y a pratiquement pas de vente de terre, ce qui fait qu'aucun paysan n'a obtenu ses terres par le biais du marché. Les paysans qui ont obtenu leurs terres grâce à l'emprunt constituent 22,1 pour cent, ceux ayant obtenu leurs terres par don représentent 25,3 pour cent de l'échantillon.

Ce sont ces deux dernières catégories qui constituent en général les sources de problèmes en matière de questions foncières. En effet, la plupart des conflits fonciers naissent de la remise en cause des accords verbaux ou tacites contractés entre les propriétaires terriens et des migrants. Ces accords ont été faits dans un contexte où le serment, la parole donnée, avait une valeur cardinale dans une société plutôt non monétarisée. Ces genres d'accords ne sont respectés ou rendus exécutoires que par l'existence de dispositifs collectifs solides et consensuels qui ont pour fondement les coutumes, codes et conventions définissant de manière claire les droits et devoirs des uns et des autres dans la communauté. Les conséquences d'un quelconque manquement peuvent être lourdes. Dans bien des cas, il peut s'agir d'ostracisme à l'égard des membres qui ne respectent pas ces codes et conventions liés aux accords sur la terre (Williamson 1996 et Brousseau et Codron 1998).

C'est certainement pour ces multiples raisons que la plupart des propriétaires qui ont accepté de céder une partie de leurs terres à de tierces personnes disent qu'ils n'ont pas de difficultés particulières avec les récipiendaires. Pourtant, la région est le théâtre de conflits fonciers récurrents. Malgré ce fait, la solidarité villageoise continue à être agissante puisque presque 80 pour cent des propriétaires disent avoir donné une partie de leur terre à d'autres paysans.

Tableau 7.6 : Répartition des paysans selon le type de propriété

Type de propriété	Fréquence (%)	Pourcentage des terres totales	Moyenne (ha)
Propriété familiale	52,6	78,3	24
Terres achetées	0,0	0,0	0
Terres d'emprunt	22,1	10,0	7
Terres obtenues par don	25,3	11,6	7
Total	100	100	16

Source : Données de l'enquête

Selon la méthode d'enquête utilisée, un montant aléatoire a été chaque fois proposé à l'enquêté qui devait l'accepter ou le refuser. Les résultats de la procédure sont consignés dans le tableau 7.7. Il indique que seulement 36,7 pour cent des propriétaires ont accepté le montant proposé contre 52,4 pour cent des non propriétaires. Ce qui veut dire que la part des personnes ayant refusé les montants proposés est nettement plus importante chez les propriétaires que chez les non propriétaires. Plusieurs lectures peuvent être faites de ces chiffres :

- beaucoup de propriétaires terriens semblent être satisfaits du statu quo actuel, ils préfèrent jouir de leurs droits patrimoniaux pour encore un certain temps que de les monnayer de façon définitive;
- les non propriétaires souhaitent beaucoup plus l'avènement d'une réforme qui leur permettrait d'être définitivement propriétaires des terres qu'ils exploitent.

Cette situation caractérise toute la dichotomie des positions qui existe au sein du monde paysan dès lors que l'on parle de Réforme Agraire et Foncière.

Tableau 7.7 : Répartition des paysans selon l'acceptation des sommes aléatoires proposées

	Propriétaires (%)	Non propriétaires (%)
Pourcentage ayant accepté le montant proposé	36,7	52,4
Pourcentage ayant refusé le montant proposé	63,3	47,6
Total	100	100

Source : Données de l'enquête

La valeur patrimoniale de la terre

Les paramètres qui permettent le calcul de la valeur patrimoniale de la terre sont obtenus à partir de l'équation 8. Puisque l'estimation a été faite séparément pour les migrants et les non migrants, nous avons des paramètres différents pour chacun de ces groupes. Les résultats sont consignés dans le tableau 7.8.

Tableau 7.8 : Paramètres du modèle 8

	Paramètre a	Paramètre b	Consentement à accepter / Consentement à payer
Propriétaire	-2,4736	5,52E-06	44 670
Non propriétaire	0,3224	-5,37E-06	23 646
Valeur patrimoniale	P		21 024

Source : Données de l'enquête

L'estimation du modèle 13 a permis d'obtenir une valeur de 44 670 FCFA par hectare. Cette valeur représente en même temps la valeur d'usage et la valeur patrimoniale chez les propriétaires.

La valeur obtenue de l'Équation 12 est de 23 646 FCFA comme montant du consentement à payer des non propriétaires pour devenir propriétaires des terres qu'ils exploitent. Cette valeur ne représente que la valeur d'usage chez ces derniers. Elle représente 47 pour cent de la valeur exprimée par les propriétaires ancestraux. La différence entre les deux valeurs exprimées entre les catégories est de 21 024 f cfa. Les non propriétaires, apparemment, sont prêts à dédommager les propriétaires ancestraux des terres pour en devenir propriétaires. Cela veut dire qu'en moyenne, étant donné la préférence patrimoniale des individus sur leur terre, il faut dépenser ce montant comme base de dédommagement si on veut que ces derniers renoncent à leurs droits. Ces individus, bien que ne faisant pas face à un marché de la terre, accordent cette valeur implicite à chaque hectare à leur possession. Pour cette raison, ils n'accepteront pas de se dessaisir facilement de leurs terres puisque cela correspond à une perte d'utilité ou de satisfaction qui a un équivalent monétaire. Pour accélérer les réformes en vue de sécuriser les exploitants sur leurs terres, il faut, d'une manière ou d'une autre, envisager la prise en compte de la perte de droits patrimoniaux auprès des populations qui prétendent les détenir. En l'absence d'une telle éventualité, il sera difficile d'obtenir leur pleine coopération dans tout processus de réforme.

Le grand problème qui se pose ici est qu'il n'y a pas de marché de la terre. Cela est dû à plusieurs facteurs dont les pesanteurs entourent la gestion de la terre. Pour les propriétaires terriens, la terre appartient aux ancêtres. Évoquer alors cette éventualité serait se mettre en port-à-faux avec ces derniers qui ont un pouvoir immense sur les vivants. Dans certaines régions du Burkina, l'étude de Paul Mathieu *et al.* (2003) évoque des cas de ventes. Cela montre que dans certaines conditions, la logique marchande de la terre peut avoir plus de force que les considérations socioculturelles. Une base d'accélération de toute réforme visant la sécurisation des exploitations doit encourager cette logique marchande en rapprochant les offreurs qui sont les propriétaires et les demandeurs qui sont les non propriétaires et qui peuvent être dans une situation précaire.

Les chiffres qui sont obtenus ici montrent que les propriétaires accordent plus de valeur à leurs terres que les non propriétaires qui, en fait, tiennent compte surtout de la valeur d'usage de la terre.

Conclusion

Au terme de cette étude, le constat fort qui s'impose est qu'il est toujours difficile de parler de marché de la terre au Burkina. Les considérations sociales l'emportent sur les considérations d'ordre économique. Cependant, il y a une volonté plus grande pour les migrants ou les non détenteurs du droit traditionnel d'évoluer vers un marché de la terre. Pour les propriétaires détenteurs du droit traditionnel, cette volonté est moins grande, la plupart se refusant à accepter la marchandisation de la terre.

L'étude a permis de voir que l'on peut avoir une valeur approximative de la valeur patrimoniale de la terre. Il serait d'environ 21 024 FCFA par hectare dans la région de Kombissiri. L'étude montre qu'il y a des possibilités de résoudre le problème du blocage de l'application de la Réforme Agraire et Foncière en passant par les possibilités de compensation des propriétaires traditionnels du montant de leur attachement à la valeur patrimoniale de leur terre. Cela permettra, à terme, de créer un marché de la terre qui favorisera une gestion durable de cette ressource. Il serait alors nécessaire de prendre cette dimension en compte dans l'élaboration de la Politique Nationale de Sécurisation Foncière en Milieu Rural (PNSFMR), qui est devenue une préoccupation des autorités dans leurs politiques de développement rural.

Notes

1. Autorités coutumières issues des premiers occupants se caractérisant par la détention d'une obligation de rendre compte aux ancêtres à travers un ensemble de rites et de rituelles.

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Rural Women Farmers' Access to Farmland Market Transactions in Nigeria

Chimaraoke Otutu and Bikey Izugbara

Introduction

That land is pivotal to current efforts to secure and improve the livelihoods of poorer rural peoples of sub-Saharan Africa is no longer a particularly surprising disclosure (Toulmin & Quan 2000; Platteau 2000; Adams, Sibanda & Turner 1996). Land remains the basic means of both sustenance and income generation in rural economies of sub-Saharan Africa. Quan (2000) writes that in this part of the world, *land is a critical livelihood asset, the cardinal natural form of capital from which the people produce food and earn a living*. But despite its centrality to the livelihood security of millions who live in sub-Saharan Africa, access to land is quite limited, especially for women (Ekong 1991 ; Izugbara 2004; Quan 1998; 2000; Hilhorst 2000). Several mutually reinforcing and often male-privileging cultural processes, linking people to land and land to people through inheritance customs and traditions have naturalised male-biased customary practices of land ownership, in which kinship confers usufruct rights to lands held and managed by extended patrilineages. As a result, many rural African women (though currently celebrated as the single most important group of actors in rural agriculture) remain with little or no real access to land).

Rural farmland market transactions (see Table 8.1), which are active throughout sub-Saharan Africa have been recognised as offering critical scope for landless rural farmers, including women to directly access agricultural farmlands

(Quan 2000; Ekong & Olowu 2002; Akpabio, Ansa & Akpan 2002). A key claim in the emerging discourses on gender and rural agriculture in sub-Saharan Africa has thus been that through rural farmland market transactions, local women farmers can become owners and operators of their own farmlands (Quan 2000; DFID 2000; Deininger & Feder 1999). Currently, however, very little, besides anecdotal evidence, exists to support this claim. Little, if any, rigorous field-based assessment exists of the extent of women's access and participation in rural farmland market transactions and or the scope which such transactions offer for rural women's exit from landlessness and poverty. If anything, this suggests an urgent need for research-based evidence.

With specific reference to data from five rural farming communities in Abia State, Nigeria, this chapter explores the following urgent questions in the search for good policy: a) whether local women farmers have access to rural farmland markets and the extent and nature of this access; b) why and how local women farmers enter rural farmland market transactions; c) the socio-economic and cultural factors that constrain local women farmers' access to rural farmland market transactions; and d) the implications of access to rural farmland market transactions for local women farmers' status, wellbeing, identity, and contribution to household livelihood security.

We expect answers that will disrupt current discourses of rural land markets that do not address or privilege women's concerns, sensitivities, and needs and sharpen current insights on issues that affect women in the transition towards sustainable development.

Table 8.1: The Concept of Rural Land Market

Rural land markets deal in rural land rights. They are active throughout Africa, in both customary and formal systems. Such transactions may take the form of:

- The buying and selling of freeholds, as well as temporary transfers such as lease and rentals,
- Long and short-term informal land borrowing including land pledging
- Land mortgaging
- Land exchanges
- Land pooling and other informal arrangements
- Transactions in rural farmland take place not only between individuals but also between social units such as lineages, etc.

Source: Adapted from; *Workshop Group Discussion on land tenure policy in developing nations*, Sunningdale, UK, 16 – 19 February 1999, DFID (1999).

The chapter is based on a study of local women farmers in five rural farming communities in the agricultural belt of Abia State, South-Eastern Nigeria. These are Ntighauzor Amairi, Akpa Mbato, Ovom Ama Asaa, Ohanze Isiahia, and Abayi Umuokoroato. The communities comprise mainly small-scale or subsistence farmers who produce cassava, yam, maize, melon, vegetables, pepper, etc. Women form the bulk of the agricultural workforce in these communities (Dimkpa 1999). They however lack landowning rights, and largely access farmlands through their husbands or other male members of their households.

Data for the study was collected from two groups of respondents: women farmers in the study communities and men, including landowners, in the communities. Women respondents were selected using a multi-stage sampling technique involving the clustering of households in each village, the use of fish-bowling to select the specific households from which the women farmers were recruited (Enoh 1997; Udofia 2002). Equal numbers of women farmers were recruited from each study community ($n = 200$). Forty-six men, including some well-known landowners in the communities, were also interviewed. These men were selected purposively with the help of key informants. In-depth individual interviews with female respondents focused on their involvement in farmland markets in the past five years, their reasons for entering the farmland markets, the nature of such transactions, barriers faced by women in participating in farmland market transactions and the implications of their involvement for their livelihoods, identity and conditions. Interviews with male respondents focused on their disposition towards women farmers' access to market transactions, their notions of the constraints and barriers women farmers face in entering rural farmland market transactions and their views of the ways in which these transactions affect women's livelihoods, identity and contributions to their households.

The chapter is structured as follows: the introduction is followed by a discussion of the literature on rural women's land rights. A discussion of the setting for the chapter, Ngwaland and its land tenure systems with particular attention to women's land interests follows this. The main section of the chapter is devoted to a discussion of the findings of a study on women's access to land market transactions and this is followed by a summary and conclusions.

Debating Women's Rights: Some Matters Arising

Literature on gender and land in Africa has proliferated over the last ten years and with it the range of debates in which women and land are implicated. Early studies in the 1960s and 1970s grappled with such issues as the role of women in land management (Boserup 1965; Noronha 1985; Downs & Reyna 1988). But a new set of issues have gained topicality in the gender and land literature since the 1990s as attention has increasingly focused on gender equality in access to land. Taken together, these represent a shift from an emphasis on women in

development to mainstreaming gender equality in development action. As Izugbara (2004) notes, the new catchwords in international development discourse with which land and access to it have become bound up are now equality, justice, self-reliance, democracy and good governance, all of which derive from the current global emphasis on sustainable and equitable development.

Two earliest commentaries on women and land in sub-Saharan were by Levine (1970) and Boserup (1970) who sought to celebrate the role of women in the management of land resources. Levine has argued that sub-Saharan African women are 'owners' of land in their own right as they engage in cash crop production and take active part in farm management decision-making. Boserup who conducted intensive fieldwork among the Yoruba of Southwestern Nigeria supported Levine's thesis, noting that Yoruba women contributed substantially to farmland management and were critical in the marketing of agricultural products. She used the concept of 'female farming system' to describe the special role of women in land and agriculture in sub-Saharan African societies. In a related contribution, Spiro (1984) recognised the critical and essential place of women in land use decision-making. Spiro believed that although men in sub-Saharan Africa held land rights, the decisions regarding the use to which lands were put usually involved women who were often the direct tillers, cultivators, and keepers of land. Spiro has argued that twice as many women as men work as farmers in sub-Saharan Africa but has noted that women's work in agriculture is largely unremunerated, undervalued, and often unrecorded. This work, Spiro has noted, involves not only toiling in fields and caring for livestock but also post-harvest processing.

More recent studies have, however, challenged the 'women as-owners-of-land' thesis arguing that the critical role of women in land-use decision-making in sub-Saharan Africa should not be taken as evidence that they own lands. Hilhorst (2000) notes that landholding in most parts of sub-Saharan Africa is customary. Chiefs and headmen, on behalf of and in trust, take community-level decisions about land for the clan or family. In the view of Ntsebeze (1999), chiefly authority is generally ascribed to a patriarchal lineage, and men take most major decisions. Further, Hilhorst (2000) notes that while women may have ways of bringing their views to the attention of such authorities, they usually do not participate in decision-making. Asa and Akpabio (2002), Imoh (2002) and Ekong and Olowu (2002) agree that women's claims to land within the traditional landholding systems in sub-Saharan Africa are generally obtained through their husbands or male kinsfolk and hence may be considered secondary rights. Hilhorst (2000) argues that the particular issues which affect women relate to the fact that their rights to land are determined by their marital status, by the laws on inheritance and divorce and by institutions that are themselves deeply embedded within local perceptions of the role that women should play in society. A married woman may gain access to land if she has her husband's authorisation; but is likely to lose

this in the event of a breakdown in relations, divorce or widowhood. Her rights may also change if her husband remarries within a polygynous arrangement. In many cases, married women do not also control land. They do not also control the livestock and farm produce and hardly make decisions about what to grow and when. Many reports suggest that women face discrimination with respect to the allocation of individual fields (NEDA 1997a). When access to a plot is granted, this may be on land which other male relatives do not want because, for example, it is not very fertile, difficult to work, or not suitable for animal traction. In northern Cameroon, it was found that women could get relatively easy access to bush field land, given its abundance, but were mostly excluded from fertile former 'kraal' fields and compounds, which were in shorter supply and perceived to be of considerably greater value (van den Berg 1999). In Nigeria, women are typically excluded from the higher-value riverbed soils, which are used for cash crop production, particularly in the dry season (Cooper 1997). A study in Burkina Faso comparing the position of women and younger men with regard to access to land, confirmed that women generally received plots that were further away and were less well-protected from erosion than the lands gained by young men. The study also revealed, however, that there was fairly equal access for both women and younger men to the clayey, fertile plots found in lowland areas (Kunze et al 1998). More recent debates by Jackson (2003), Walker (2003), Agarwal (2003), Whitehead & Tsikata (2003) and Tsikata (2003) have pondered the legal, tenurial, discursive, theoretical, and policy frameworks for gendering land rights. Focus has been on the prospects and problems of gendering land rights via formal policy, customary laws, family links, and the market (Jackson 2003; Walker 2003; Agarwal 1994, 2003; Whitehead & Tsikata 2003; Deninger 1999). Most of these studies agree that women in sub-Saharan Africa generally lacked direct access, user rights and control over land. For many reasons, as Tsikata (2003) writes, women in both patrilineal and matrilineal areas have only indirect access to land. Traditionally, therefore, women in sub-Saharan Africa lack guaranteed access to farmlands because of bias, prejudices and ideologies which cast them as less reliable protectors of clan land than men.

A woman may have to explore alternative means of access to land for cultivation when she cannot obtain land through her affiliation to her husband or male members of her family (van den Berg 1999; Cooper 1999). One of such potential means of access to farmlands is through farmland market transactions. Whether or not land is registered and titled, the existence of formal and informal land markets is increasingly apparent in many parts of Africa (Obioha 2004).

Land market issues were identified as an important topic for further investigation by land tenure practitioners from throughout Africa at the DFID Workshop on Land Rights and Sustainable Development in Sub-Saharan Africa held in 1999. At the same time, events of the last two decades during which

shifts in global development agendas have led to a resurgence of *laissez faire* orthodoxies and a marked ambivalence, if not outright hostility towards the developmental state (Razavi 2003), have seen economists and other development scholars increasingly arguing that market transactions in land are beneficial because they allocate land from less to more efficient producers. In a rational world of perfect markets, inefficient producers would benefit from selling their land, because the market value would exceed that of the income stream they are able to generate themselves. More efficient producers, on the other hand, should be able to generate greater incomes and, therefore, find it profitable to invest in land purchase. Moreover, if small farms are indeed more efficient than large ones, land markets should also promote greater equity, since they would encourage the transfer of inefficiently used large land holdings to more efficient smallholders (Deninger & Feder 1999).

The 'gender efficiency argument', which posits that women are essential in the reproduction of activities that sustain the economy, has also been evoked to back up arguments for women's access to farmland markets. Relying on neo-classical micro-economic analytical tools, it is held that the root of allocation inefficiencies is the structure of male and female incentives in farm households. Gender is thus viewed as effectively about inequality in resource allocation. One important resource constraint to which their analysis draws attention is women's inadequate access to land – attributed to patriarchal land institutions. Secure property rights which are not guaranteed women in traditional land-holding practices, it is argued, are needed to promote more efficient use of land. Gender equitable land titling is held to be a panacea for women's unequal access to land, female poverty, and female subordination and the belief is that land markets can guarantee women farmers' access to agricultural farmlands.

Scholars have also debated the benefits of derived rights which may attend women's access to farmlands. The debates have been polarised between those who see the empowering potential of the non-economic benefits of women's access to these interests and those who emphasise their exploitative character. Although Delville et al (2002) provide a dynamic interpretation of these interests, they tend to downplay the weight and importance of high land rents and the fact that they perpetuate women's position in the poverty bracket.

Farmland market transactions are a well-established feature of socio-economic life in many rural sub-Saharan communities. They can also take a variety of forms and, many argue, present some scope for many landless farmers to access farmlands. In Nigeria, to be specific, rural farmland markets offer many local landless farmers access to farmlands (Ogunlana 2001; Izugbara 2004; Obioha 2000). The number of Nigerian rural farmers who rely annually on the rural farmland markets to access lands for farming is estimated at over 8 million (Obioha 2004). Currently, however, our knowledge of the extent of rural women's

access to and participation in these farmland markets and, more importantly, the scope which these transactions offer for women's exit from landlessness and their limitations, is limited. There is also very little information on the fairness and or otherwise of such transactions when they involve women. The present study engages with these gaps in the literature.

The Setting

The study on which this chapter is based was conducted in rural Ngwaland, Nigeria. The Ngwa presently number about 2 million people and are reportedly the single largest clan in South-eastern Nigeria. Ngwaland is an area of 1,313km² and lies north of latitude 50.30 °N and between longitudes 90° and 70.30 °E. The origin of the Ngwa, like their parent Igbo ethnic stock, is contested. The Ngwa themselves say that until a few thousand years ago they lived with other Igbo clans near Amaigbo (estate of the Igbo) a village currently in Nkwere, Imo State, Nigeria.

The fabled Imo River borders Ngwaland in the west. The eastern border of Ngwaland runs roughly north-eastwards to link the 'No man's land' which separates the Ngwa and their Annang neighbours. The Asa-Ndokki clans border the Ngwa in the south, while further northwards, adjacent to the Ngwa village groups of Ntigha and Nsulu, are the Ubakala-Olokoro Igbo. Their north-eastern neighbours are the Isiorgu. Ngwaland is a rich agricultural belt, which some commentators see as justifying their adopted name, Ngwam, the lucky ones. Farming is the predominant economic activity in rural Ngwaland. Currently about 95 per cent of Ngwa people profess Christianity. Traditional worshippers comprise the rest of the Ngwa population.

Patterns of socialisation into gender and sex roles among the Ngwa have historically been institutionalised, through a series of gender-based initiation activities where young males and females develop strong and distinct senses of masculinity and femininity. Each young Ngwa man or woman often belongs to a number of gender and age-specific groups in which he or she interacts and learns from her/his own peers. Very early on, Ngwa males are socialised to see themselves as heads of households, breadwinners, and 'owners' of their wives and children. On the other hand, the cultural socialisation of females aims largely at training them to accept male domination or control, stay faithful, loving, and subservient to their male partners (Oriji 1998).

The Ngwa system of land tenure is based on three principles, namely: that the land ultimately belongs to the community and cannot be alienated from it without its consent; that within the community the individual has security of tenure for the land he requires for his compound, gardens and farms; and that no member of the community shall be without land. The community here refers to the maximal patrilineage. It is important to point out here that among the

Ngwa, landowning and tenure rights are ultimately invested in men. Women often only have use rights. Land is normally owned and inherited by men; a householder being expected to provide the women of his household with land for their farming needs. Where a householder lacks sufficient land of his own to supply the needs of his wives, he endeavours, if he is wealthy enough, to rent or obtain in other ways, the additional land they require. Terms like Title, Rent, Pledge, Sale, require specification before they can be applied to Ngwa land-related matters (Jones 1939).

Jones (1939) has noted that in the case of the word 'Sale', which could be included under the more comprehensive term Outright or Absolute Transfer, a distinction is still needed between land for housing and land for farming, and again between transfer to a stranger and transfer to a member of the community. In the case of house land, it is the individual's security of tenure that matters, while in the case of the farmland, the community's interest is to ensure that it is not transferred at the wrong time, to enemies of the lineage, to rival groups or in a way that humiliates the lineage or calls its authority to question. For like reasons, individuals are forbidden from selling, renting or even leasing communally-owned lands without consulting the patrilineage. In many instances, privately-held land cannot also be sold without the knowledge and approval of the patrilineage (Orij 1998).

Women and Land Markets in Ngwaland

Table 8.2: Socio-demography of Respondents

Characteristics	Male	Female	% of total
Marital Status			
Married	43	186	89.1
Separated	1	3	1.6
Widowed	2	11	5.3
Age			
30 & Below	2	19	8.4
31-44	9	56	26.4
45-58	23	94	47.6
59 & above	12	31	17.5
Family Size			
0-4	8	49	23.2
5-9	21	121	57.7
9 & above	17	30	19.1
Educational Level			
No formal education	9	24	13.4
Primary education	24	133	63.8
Secondary education	12	42	21.6
Tertiary	2	1	1.2

Religious Affiliation			
Catholic	9	22	12.6
Protestant	34	171	83.3
Indigenous	1	1	0.8
Others	2	3	2
Main Source of income			
Farming	32	179	85.8
Petty business	3	6	3.7
Self-employed	2	2	1.6
Formal employment	5	2	2.9
Unskilled	1	7	3.25
Others	3	4	2.7
Status in Current study	-		
Women accessing LMs	-	28	14**
Women expressing need for, but unable to access LMs	-		
	-	148	74**
Women not needing access to LMs		24	13**

***Based only on the responses of women*

Table 8.2 shows the distribution of respondents on the basis of marital status, age, family size, and their role in the present study. As the table shows, women formed 81 per cent of the respondents and men 19 per cent. Married respondents are also in the majority, comprising 89 per cent of the sample. Other important categories include widowed and separated respondents who formed 5.3 per cent and 1.6 per cent of the sample respectively. With regard to age, the highest proportion of respondents was in the age category of 45-58 years. Persons within this age category formed 57.7 per cent of the respondents. Respondents aged between 31 and 44 were also significantly represented, forming 26.4 per cent of the sample. There were also 43 respondents representing about 17.5 per cent of the study participants who were aged 59 and above. Only 22 persons (8.4 %) were in the age group of 30 and below. All in all, the sample shows not only a pool of respondents that cuts across different age sets, but also a preponderance of persons who will be knowledgeable about matters concerning land in the study area.

When questioned about their educational levels, the bulk (63 %) of the respondents reported having only primary level education. A significant number of the respondents also had secondary education. There were 33 persons (13.4 %) without formal education. Altogether, the average length of schooling among the respondents stood at 9.3 years. In terms of religious affiliation, the majority of

the respondents self-identified as Christian with only 7 (2.8 %) self-identifying as indigenous worshippers or belonging to other faiths.

The bulk of the respondents were farmers (85.8 %). The rest were involved in petty business, self-employed or in formal employment. Women in the study who had personally accessed farmland markets in the past five years were only 28, representing 14 per cent of the sample. However, a total of 148 women confirmed having need to participate in such transactions but were unable to, due mainly to finance-related constraints. Only 24 women, mainly wives of large farm-owners did not express the need to access land markets.

Farmland Transfers and Markets in the Study Area

Data elicited from respondents indicate that transfer of land can assume three kinds in the study areas. Seasonal transfers, where the use of the land is limited to one farming season; temporary transfers, where the use is granted for an indefinite period but with the intention that it will eventually be recovered by the person who has transferred it, or by his heirs; and, permanent or outright transfer, where the intention is that the land should remain permanently with the receiver. This third form sometimes depends on whether the transfer is unconditional or is subject to certain reservations, the breach of which nullifies the transfer. Seasonal transfers may take the forms of gifts or it may be made in consideration of a token or rent. It can be made by an individual or group and the beneficiary may also be an individual or group. Temporary transfers occur mainly through borrowing, leases, pledges and mortgages. A person in need of money can get it on the security of his land, the use of which is transferred to the lender and his heir until such a time as the debt is repaid. Customs and economic conditions restrict the amount for which land is pledged and keep the rates fairly uniform. Permanent or outright transfer of land can be by gift with or without conditions attached. It can also be by exchange of money or other valued resources. There is also often no motivation to improve the value of land received through pledges as it can be redeemed by the owner at any time.

Data indicates that transactions in land were an established feature of rural socio-economic life and organisation. Although none of the respondents in the study knew when and how these farm land transaction methods started, they were agreed that transactions in land had been practiced for ages. One local chief and owner of several pieces of land argued that transactions involving land had occurred from time immemorial and helped to redistribute arable land to those who had need for it. In the longer narrative, he was convinced that both landowners and landless people benefitted from the transactions involving land.

Land loans and leases, pledges, sharecropping contracts, land exchanges, borrowing, and outright sales were the commonly mentioned transactions involving farmlands in the study area. The bulk of transactions in farmlands in

the surveyed communities transferred land to the landless on temporary or short-term basis. Cases of outright sale of farmlands were thus rare. Many landowners we spoke with had inherited their lands from their fathers, and did not speak highly of outright sale of land. They generally associated outright sale of land with permanent alienation from its owners, as it was reportedly often difficult to buy land back once it had been sold. Outright sale of land was also spoken of as a sign of poverty. Respondents noted that it was often poverty that caused rural landowners to sell their land outright. There was also sense in which outright sale of land was associated with greed and lack of interest in the future of upcoming generations. Many of the respondents noted that people who sold lands they inherited were selfish people who did not have the interest of future generations at heart. Another aspect of landowners' reluctance to sell land outright was the fact that land was considered a factor of territorial integrality. Land appeared to embody both lineage values and characteristics and selling it outright was framed or spoken of as a disservice to one's lineage group. In Ekong (2003), it is noted that many societies in Africa define themselves as integral to land and land as integral to them. The essential rights in land are therefore often those of use and not really of final disposal. People thus see themselves as only holding land in trust for future generations and as lacking power to dispose of land outright. But distress sales do occur, particularly during periods of crises, difficulties and intense hardship.

Men were the main holders or owners of lands in the communities, and it was normally through them that the landless accessed lands. Land in the communities under study was circumscribed by powerful beliefs that imbued it with intrinsic social values, which were reinforced by norms granting land ownership and holding rights nearly exclusively to men. Women rarely owned land in these communities. A woman might, however, be gifted with land by a male member of her own family (father, grandfather, brother, etc). Such lands also often reverted to the family of the benefactor at the death of the woman or that of the benefactor. Women holding such lands were generally aware that such lands were not really theirs. One of the women informants narrated how land given to her mother by her mother's father was taken back by her mother's brothers at their father's death. She says, 'they simply told my mother that the land needed to be redistributed among the males in the house' and that she should no longer consider the land her's. Her pleas fell on deaf ears. One of her half-brothers was even reported as saying that 'my mother had no business holding on to land when men were yet to have enough'. In one of the communities, it was generally believed that women did not own land. In another, it was said that 'women do not carry land to their husband's house'. Further, women themselves were thought to be part of the properties of men and that whatever they owned belonged to their husbands. This belief was brought into poignant relief by what one of the men of authority told us.

Nothing stops women from having property. But remember the story of the woman who became so rich that she challenged her husband. When she finished with an inventory of her possessions, her husband simply laughed and said “my dear wife what a great wealth you have... but don't forget you are yourself only part of my own wealth”.¹

Notwithstanding the strictures on women's ownership of land, it was widely reported that women farmers in the communities had acquired farmlands through land market transactions and that this was not a new phenomenon. ‘Even in the traditional background,’ one male landowner told us, ‘women farmers accessed farmlands through various types of transactions on land including outright sales’.

Local Women Farmers' Access to Farmland Markets

Table 8.3: Farm Land Market (FLM) transactions engaged in by women in the study^{1*}

Types of FLM transactions ever engaged in by women respondents	F	%
Land loans/ leases	27	45.7 23.710.25.15.16.83.4
Pledges	14	
Sharecropping	6	
Land exchanges	3	
Land Borrowing	3	
Outright Purchase	4	
Others	2	100
Total	59	

1. *Based only on the responses of women who reported access to farmlands markets*

**Sample size will be exceeded due to multiple responses.*

As noted earlier, only a small number of the 200 local women farmers surveyed had personally accessed farmlands through market transactions in the last three years. The bulk of the respondents, 148 of them (74 %) noted that they did not have access to enough farmlands and would seriously like to access farmlands through markets transaction but for their lack money. Further, only 24 women (12 %) noted that they did not have any need to use their own resources to buy farmlands as they had adequate access to lands through their husbands or male members of their families. Although the sample may not be representative, the statistics could be an indication that only a small fraction of local women farmers who have real need to enter rural land markets ultimately realize the dream. In Table 8.3, information on the types of farmland market transactions engaged in by women in the study is presented. The commonest types of transactions

through which the women accessed farmlands were rentals, loans and leases. These constitute 45.7 per cent of all farmland transactions engaged in by women in the study. Rentals and loans were seasonal or temporary transfers during which the use of the land was limited to one or a few farming seasons. Often landowners rented out the land in standard parcels, portions, or tracts. It was not rare for two or three poorer women to jointly rent a parcel of farm and to further sub-divide it among themselves. The field data, however, showed that landowners were more likely to rent out farmlands with low fertility.

Some women in the study also confirmed accessing farmlands through pledges and sharecropping contracts. In pledges, a landowner in need of money can borrow it on the security of some of his land. The woman to whom the land is pledged is normally not entitled to use it for purposes other than farming. Many landowners also insist that the land be allowed to lie fallow every two years before it is farmed again. The person to whom a portion is pledged is also often not at liberty to pledge it to another person without the consent of the original owner. Access to farmlands through pledges was relatively popular, accounting for 23.7 of the sources of farmlands used by women in the study. Women in the study reported that there was often little incentive to improve land accessed through pledges as it could be redeemed anytime by the payment of the original debt. There were also a few women accessing farmlands through sharecropping contracts. This involved planting one's own crops on farmlands currently farmed by men. In most instances, landless women were invited by landowners who needed cheap labour to farm large parcels of land. Usually, such women planted women's crops such as cassava and cocoyam while the men planted their yams. The women often paid for the land by weeding the farms and sometimes giving part of the yields of their own crops as payment to the landowners (Deininger and Feder 1999). Information offered by women in the study showed that sharecropping, as a form of payment in kind for land access, was not necessarily exploitative. Sharecropping offers a means by which the poor can gain access to land, and in the study area it provided an important form of risk sharing and mutual aid in times of crisis, strongly rooted in social and kinship relations. It was, however, not common.

One woman confirmed being allowed access to three pieces of farmland in exchange for allowing the three wives of a big local landowner to freely use the cassava-processing machine bought for her by one of her daughters. Again, another woman also reported having bought farmlands outright from a local landowner. The data suggests that leases, rentals, pledges, and loans, etc, were the commonest ways women farmers accessed farmlands. The emerging evidence is that these were primarily low-cost transactions requiring very little cash investments (Deininger and Feder 1999). All these transactions are subject to revocation, contest and re-negotiation over time, as conditions change, providing both the advantage of considerable flexibility and the possibility of conflict and misunderstanding. For instance, rentals, leases and loans do not involve the

permanent alienation of land, and provide benefits for both lessor and lessee. Land borrowing arrangements provide a mechanism for landholders to dispose, temporarily, of land they cannot utilise, and for poor people, the landless, or dispossessed to take up farm production.

Outright buying of farmlands was less common among women, largely due to the high-cost of such transactions. It accounted for only 6.8 per cent of all farmland transactions involving women in the study. Besides cost, outright land sale was not popular among men who owned land. Landowners did not often consider it right to sell outright, especially to women. Many male landowners I spoke with said it was bad enough to sell inherited land, and more so to sell to women. Selling one's land to a woman negated masculinity and the pride associated with being a man. One male landowner told us:

I can lease, pledge, and loan out my land.... But I can't easily sell off my land outright. It is not good to sell off one's lands outright. You should be able to hand over lands to your own children...The process shouldn't end with you. But if you have cause to sell your lands, it shouldn't be to women. You should sell to men... it is more honorable.²

When asked about the sources of capital used to enter rural farmland markets (see Table 8.4), respondents mentioned micro credits (12.1 %), informal money-go-round financial schemes (23 %), personal savings (29.7 %), borrowing and local money lenders (15.4 %), monies realized from ceremonies, and cash gifts from friends, well-wishers, and relatives, etc, (19.8 %). The basic motivation of women entering rural farmland markets was the desire to become independent farmers and produce their own crops that would help them increase their own incomes and ultimately be able to do certain things for themselves (e.g., buy bicycles, clothing, household utensils, livestock and jewelry).

Table 8.4: Sources of Capital ever used by by women accessing LMs1 *

Sources of funds	F	%
Micro credits	11	12.1
Merry-go – round schemes	21	2329.7
Personal savings	27	15.4
Borrowing	14	19.8
Gifts and other sources	18	
Total	91	100

1 Based only on the responses of women who reported access to farmlands markets

* Sample size will be exceeded due to multiple responses

Both the local men and women surveyed agreed that women's access to farmland tends to increase their incomes, reduce their dependence on men, and reduce the risk of poverty-related stress among households. Women who had entered the rural farmland markets reported improvements in their incomes, better household nutrition, and diversification into non-farm ventures. They were also less reliant on their men and reportedly contributed more to household upkeep than women who lacked access to farmland markets. Women who were able to acquire farmlands through market transactions sometimes continued to farm their husbands' lands. However, it was noted that because their husbands usually took all the key decisions regarding the use to which such farmlands and their agricultural products were put, the women's access to personal incomes was not often guaranteed under such farming regimes. Madam Wigwe from Abayi village told us:

My husband's farmlands are there. I still farm them for him. But I can't really call those farms mine. My husband decides on how many parcels of land we farm yearly. Sometimes I plant his yams and have to wait for a long time to plant my cassava. I usually end up planting my cassava late which affects its yields. Sometimes too, he will tell me 'no cassava here, no cassava there, only yam, or he will say 'don't apply fertilizer to the cassava, it kills my yam' and so on.³

Another respondent also noted:

When you plant on farmlands given to you by your husband, he keeps an eye on how you use the harvest. He will say 'don't sell all that cassava so the children won't starve' or 'the children need school fees' or he will say 'sell that cassava and give me the money'. But when you acquire your own farmlands independently, you do whatever you like with the harvest. The man doesn't control what you plant, how you plant it, what you produce and how you use what you produce.⁴

Women farmers in the study relied largely on social networks and ties for information on farmland transactions. Often, they would seek and collect information from fellow women about men willing to lease, loan, sell, rent, or pledge their lands. They often would start the quest for farmlands well before the commencement of a new planting season. One woman said:

We make out contacts, often through other women. You tell them that you will need farmlands and the types of transaction you are interested in or can afford. So if their husbands or other men they know want to offer their lands for sale, lease, etc, they will contact you.⁵

The women also reported that before entering into any transaction over farmlands, they sought information on the status of such lands, as it was not uncommon for some unscrupulous landowners to offer lands that were not theirs, were in litigation, or were infertile on the basis of the women farmers' assessment. Landowners sometimes also offered one piece of land to several buyers. Women who entered land markets often informed their husbands or other local men

of authority. This was to ensure that husbands did not become jealous and suspicious. It also reportedly prevented male landowners from treating women land seekers unfairly.

Constraints Faced by Women in Entering Farmland Markets

Local women farmers faced some constraints in entering rural farmland markets. Poverty was the most critical of these constraints. Most women who wanted to enter farmland markets were unable to do so due to lack of capital. In sub-Saharan Africa many small farmers, and especially the landless poor, operated within a partially non-monetised economy, and had no access to capital or sources of finance. One of the respondents said:

Personally, I would really like to rent at least a piece of land, but I do not have the money. Where will the money come from? Nobody gives his land free of charge here. My savings are low and I can't pay the kind of money they want at once. So I make do with my husband's farmlands.⁶

Another noted:

I am not able to enter farmland markets because farmlands are costly. I don't have money to pay for farmlands. My major problem is that I don't have money.⁷

It was evident in most of the narratives surrounding poverty as a constraint on women's access to farmlands, that women were well aware of their marginalised position in the local economy. Most of them affirmed that they primarily depended on husbands and or other male relatives for their upkeep and revealed that this affected their well-being, respectability and sense of fulfilment. The bulk of the women expressed lack of satisfaction with having to wait for men before they could eat, seek medical help, clothe themselves, and have their children attend school. They generally resented having to depend on men for everything. The cultural construction of land and land-related issues as male matters was also a major constraint on women's entry into the rural farmlands market. Interview results indicate that in matters related to land, landowners generally preferred dealing with men to dealing with women. As one landowner told us, 'when you pledge or loan or sell your land to a woman, everybody feels that you are very poor. It is more honourable to do farmland transactions with the poorest man than with the richest woman'.

Some male landowners in the communities also reportedly raised the price of their land when selling, renting, leasing, or pledging to women. The women constructed this as a way landowners tried to discourage them from entering the land market. Some women farmers resorted to using their husbands or other male members of their families as fronts to access farmland markets. This practice also helped women to avoid being defrauded or unfairly treated by male landowners. One woman's story is worth citing;

Some of these landowners are fraudulent. I have been defrauded about twice ... These men will collect money from several persons and show them the same piece of land and sit back to watch them fight over it. It happened to me, I reported the man to the village headman; they asked the man to pay me back. Up till now, I am yet to receive the whole money back from him. My husband did not even support me. He said I did not consult him before renting the farmland. Now, I discuss with him before renting. In fact, he buys for me. It is safer.⁸

It was also reported that some husbands had prevented their wives from engaging in rural farmland market transactions. Some women revealed that their husbands had scolded them when they raised the issue with them. Men surveyed noted that it was not uncommon for women to begin to challenge their husbands once they had their own personal incomes and that men who tried to dissuade their wives from entering farmland markets might in fact be securing their (the men's) headship of the family. In the literature, it has been noted that women's access to their own fields may be constrained by fear on the part of men of the perceived independence that this access may generate. In Uganda, for example, some consider that a woman who owns land will never have stable marriage and, as a consequence, such women will be little respected within the community (Ovonji-Odida 1999). Some men in Cameroon refuse to give land to their wives, since they fear that they will lose a wife's labour on their own fields or else may not like the idea of women earning their own money (van den Berg 1999). In the present study, one man thus told us:

my wife can't rent land when I'm still alive. It is my role as the owner and the head of this family to provide land for her. It is an insult to me for her to go asking for and renting farmlands from landowners. People may begin to think I can no longer take care of her. If she wants her own farmland, she can wait until I am no more, but as long as I live, she can't do that. It is my duty to provide her with farmland and I try as much as possible to do it.

Conclusions and Policy Implications

Land remains an asset of great importance in rural Nigeria. It is the key source of income, food, employment and export earning. Access to land is especially important for many rural Nigerians whose major means of sustenance is subsistence farming and for whom land and the biological resources it supports are principal livelihood assets. Yet access to land is limited for several persons in rural Nigeria. The problem of lack of access to land is perhaps most critical for local women farmers in Nigeria. The tenurial system of landholding in Nigeria is largely male-biased, denying women access to land. This contributes immensely to low agricultural productivity and perpetuates the problem of lack of income among rural women. Although current research has recognised the potential of rural farmland market transactions in enabling local women farmers to access farmlands and become independent operators, little is known about the issues which shape rural women farmers' access to farmland markets. This chapter

investigated the significance of gender in access to local farmland markets in five communities in Nigeria in order to inform policy and practice concerning not only sustainable food production and livelihood security but also health, gender equality, and rural community development.

From the analysis, women farmers' access to rural farmlands is disappointingly low and only a few women farmers who need to access farmlands through market transactions are able to do this. Women farmers are also primarily able to participate in low-cost and short-term land transactions such as rentals, pledges, loan and sharecropping contracts. However, women who have access to farmland markets report higher personal income and savings as well as more economic independence. Such women also confirmed contributing more to household upkeep which reduced the vulnerability of their families to poverty shocks. Poverty, gender relations, and male-biased socio-cultural values and norms are the key obstacles faced by local women farmers in accessing farmland markets.

Emerging from the study is the need to broaden local women farmers' access to rural farmland markets. This, however, does not appear possible until local women are able to achieve what Howard (2003) calls a culturally and physically acceptable level of welfare from their interactions with the environment and society. This means that the economic and cultural position and realities of women need to be generally rethought and acted upon in a result-oriented and equity-enhancing manner. The cultural values that demean local women, deny them access to land, accord little value to them, and construct them as properties of their husbands; and the economic processes that make them poor, insecure and dependent are deep-rooted and may not respond easily to one simple solution. Yet we could be on our way to eradicating these problems and improving the access of rural women farmers to farmland markets if we expanded the access of local women farmers to money. Micro credit has a major role to play here. In Nigeria, currently there are many micro credit schemes sponsored by governmental and non-government agencies focusing mainly on urban women in business and trading activities. The needs of rural farmers, especially women, for money and capital have to be taken up by implementers of these schemes. Secondly, there is the need to work towards improving the security of tenure of farmlands women acquire through market transactions and reforming local inheritance laws which deny women ownership and control rights in land. Furthermore, rural agricultural extension services need strengthening to become sensitive to local women farmers' needs for participation in farmland markets. Other measures include:

- The need to promote local men understanding of the benefits of gender equality, women's empowerment and women's access to farmlands for women as well as for men, children and entire households and communities. This should be done together with land rights advocacy that supports the needs of the poor, landless people, and women, and

- The need for research that broadens knowledge of how local women's relationship with land intersects with livelihood conditions of households and communities are also necessary for addressing women's constraints.

The clear challenge here is to policy makers to develop a process that will support local women farmers to become independent owners and operators of their own farmlands. As Abdalla, Becker, Hanke et al (2002) write, actions taken today will definitely have significant impacts tomorrow, and it will be a positive development if landless local women are the major beneficiaries of such actions.

Notes

1. Interview with Mr. Waonina, Avo Village, Obete, September 2006.
2. Interview with Chief Worgu, Abayi village, October 2006.
3. Interview with Madam Wigwe, Abayi Village, September 2006.
4. Interview with Mrs. Eziaku Obioma, Eziamma, Obete, December 2006.
5. Interview with Mrs. Adaku Ikonne, Akpa, July 2006.
6. Interview with Mrs. Onya, Ovom, July 2006.
7. Interview with Mrs. Adaku Ikonne, Akpa, July 2006.
8. Interview with Mrs. Grace Azunna, January 2007.

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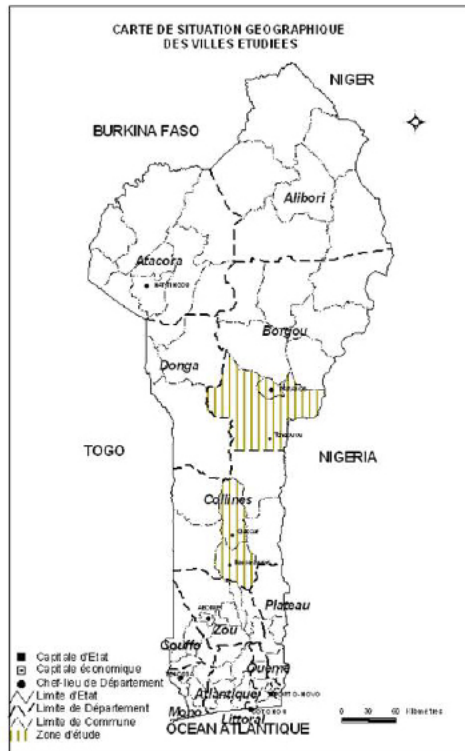
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Dynamiques foncières autour des villes du centre Bénin : cas de Parakou, Tchaourou, Glazoué et Dassa-Zoumè

Ramanou Aboudou and Innocent K. Akobi

Carte 9.1 : Situation géographique des villes étudiées



Problématique

Les processus d'urbanisation sont un des phénomènes majeurs des pays africains, ils posent des défis sociaux et environnementaux énormes. Dans un contexte de crise économique, les possibilités de revenus pour les ruraux qui s'installent en ville s'amenuisent, reposant la question du rôle de l'agriculture comme source d'emploi et de revenu (Ecocité 2003). La pression exercée par la croissance urbaine sur les ressources et les espaces agricoles à la périphérie des villes se traduit notamment par des mutations sensibles dans l'appropriation des terres, une intensification des systèmes de production et souvent une spécialisation en fonction de la demande urbaine et/ou les marchés d'exportation dont les centres urbains constituent des lieux de regroupement et d'expédition des produits. Elle se traduit aussi par la disparition d'espaces agricoles à fort potentiel ou d'espaces naturels à fort enjeu environnemental, et par des rejets en périphérie de déchets solides (ordures, composts) ou liquides (eaux usées).

Les villes des départements du Borgou et des Collines en République du Bénin présentent, de ce point de vue, certaines spécificités qui lui confèrent une dynamique particulière. En effet, elles possèdent de forts taux de croissance et sont à très forte influence agricole. Les multiples migrations et surtout les installations massives des colons agricoles engendrent une véritable emprise sur les ressources naturelles, notamment foncières. Les zones urbaines ont envahi certaines des meilleures terres agricoles. Cela entraîne un véritable empiètement du périmètre urbain sur celui de leur environnement immédiat. Le caractère singulier de ce phénomène se traduit à travers quatre tendances lourdes (Serhau 2001) :

- une forte croissance spatiale marquée par une occupation très lâche ;
- la multiplication des transactions foncières dans les zones périurbaines engendrant une multitude des conflits ;
- l'orientation de plus en plus nette des activités vers l'agriculture en raison de la demande sans cesse croissante des populations urbaines et ;
- l'implication et l'émergence de plusieurs acteurs du foncier qui remettent généralement en cause les législations foncières traditionnelles préétablies.

Ces quatre tendances ont été déjà superficiellement mises en évidence par cette dynamique foncière des villes du centre Bénin. Partageant cette vision, il ressort que, par rapport aux autres tendances, ce sont surtout les activités agricoles et les habitations qui retiennent beaucoup plus l'attention. Mais le contraste ici est qu'il n'existe pas véritablement de cultures maraîchères. On a plutôt affaire à des cultures pérennes telles que les plantations de manguiers, de tecks et d'anacardiens, et les cultures annuelles comme le coton, l'igname et surtout les céréales, consommatrices d'espace.

Cette situation pose un certain nombre de problèmes assez importants qui se résument à trois questions fondamentales :

- la difficulté d'arbitrage qui transparaît dans la première tendance lourde se résume à comment concilier l'installation des populations avec la gestion des ressources foncières qui, elles, sont inextensibles ?
- comment concilier aussi une agriculture qui n'a pas encore acquis les éléments d'intensification avec la pression démographique et la nature du peuplement actuel de ces villes ?
- enfin, quelles stratégies sont mises en œuvre pour faire face à une gestion durable des ressources naturelles (notamment foncières) en rapport avec la nature des activités agricoles autour de ces villes à forte extension ?

De façon pratique, la croissance spatiale des villes et l'augmentation de leurs besoins en produits agricoles ne conduiront-ils pas au schéma d'occupation des bas-fonds et à la multiplication des conflits, notamment fonciers ?

C'est pour tenter de répondre à ces questions que nous avons choisi le thème : « Dynamiques foncières autour des villes du centre Bénin: cas de Parakou, Tchaourou, Glazoué et Dassa-Zoumè ». La connaissance du milieu et les observations faites sur le terrain ont permis de poser quelques hypothèses.

Hypothèses de travail

Quatre hypothèses sont ici formulées pour conduire le travail :

- il y a un enjeu économique et écologique dans les transactions foncières à la périphérie des villes et dans leurs franges en cours d'urbanisation ;
- la disparition des espaces agricoles dans les périphéries des villes engendre une reconversion des ruraux à des activités urbaines tandis que les citadins orientent leurs activités vers l'agroforesterie ;
- la croissance urbaine dynamise l'agriculture périurbaine en lui infligeant une multifonctionnalité ;
- le maintien de certains de ces espaces doit se faire par une meilleure intégration des activités agricoles au contexte urbain et la recherche de diminution des nuisances des activités urbaines et agricoles sur l'environnement.

Objectifs de travail

L'objectif principal de l'étude est de réaliser une analyse fine des processus d'expansion en cours en caractérisant le jeu des acteurs.

Les objectifs spécifiques visent à :

- repérer, spatialiser et analyser les dynamiques des périphéries urbaines dans les processus de l'expansion urbaine et en identifier les grandes modalités selon les lieux et les époques ;
- caractériser le jeu foncier local et des rythmes, formes et modalités de l'expansion urbaine ;

- comprendre les jeux des acteurs et les pratiques foncières, les processus concrets de changement de statut de parcelle agricole en parcelle d'habitation, et les transactions et ;
- analyser des problèmes d'articulation entre décentralisation administrative et gestion décentralisée des ressources foncières.

Méthodologie de travail

Elle a consisté à la définition des méthodes pouvant permettre d'obtenir des résultats fiables. Cette méthodologie comporte les importantes étapes suivantes :

La recherche documentaire et la revue de la littérature

Elle a commencé en novembre 2005 et s'est poursuivie tout au long de la rédaction de cet ouvrage. Les ouvrages exploités ont porté aussi bien sur le thème choisi que sur ceux qui lui sont analogues. Les études et travaux de recherche effectués aussi bien dans le centre du Bénin que dans d'autres localités ont été pris en compte. L'accent a été particulièrement mis sur les transactions foncières, les acteurs du foncier, les stratégies développées par chacun d'eux ainsi que les mutations observées aussi bien dans les pratiques qu'au sein des institutions.

Le choix des villes de l'étude

Il est important de décrire sommairement les sites retenus pour mieux appréhender les problématiques foncières que pose leur croissance. Cela a conduit à les regrouper par deux au regard de leurs relations de proximité. Voilà en filigrane les éléments qui ont permis de faire ce choix.

Parakou et Tchaourou

Situés dans le département du Borgou, les communes de Parakou et Tchaourou évoluent dans un contexte où la première souffre d'un mauvais découpage territorial (Aboudou, Joecker et Nica 2003) qui lui confère un espace trop étriqué, presque totalement enveloppé dans un grand ensemble constitué par la commune de Tchaourou, la plus vaste du Bénin. De par sa position de ville carrefour et ses multiples fonctions commerciale, agricole, industrielle et administrative, Parakou connaît de nos jours une croissance spatiale rapide de l'ordre de 4,2 pour cent (Aboudou, Joecker et Nica 2003) et empiète sur le territoire voisin de Tchaourou dont le centre urbain est éloigné d'une cinquantaine de kilomètres. Les champs, les fermes, les carrières, les lieux de collecte du bois de chauffe, l'eau de consommation servie aux ménages de Parakou, etc. sont situés sur le territoire de la commune de Tchaourou, notamment les terres « vides » ou « vacantes ». L'inexistence d'un cadre formel d'intercommunalité crée de multiples conflits

entre les administrations des deux entités communales et entre les populations dans la gestion des terres qui constituent le support des différentes activités suscitées.

Glazoué et Dassa-Zoumè

Situées dans le département des collines, les communes de Dassa Zoumè et de Glazoué sont frontalières et leurs centres urbains, distants l'un de l'autre d'une vingtaine de kilomètres. Les espaces de ces deux entités s'enchevêtrent aujourd'hui en raison d'un certain nombre de facteurs qui caractérisent chacune d'elles.

En effet, la commune de Dassa-Zoumè, de par sa position géographique, est une ville carrefour du centre du Bénin qui permet de joindre le nord, le sud et l'ouest du pays. La ville bénéficie d'importants atouts touristiques, avec la présence non seulement des collines, mais aussi et surtout de la grotte mariale qui draine chaque année plusieurs milliers de pèlerins. La forte densité de la ville et surtout la pression démographique favorisent une forte demande de terres pour la construction, là où il n'existe pas de collines.

Toutes ces raisons amènent les décideurs locaux ainsi que d'autres acteurs du développement local à élaborer des politiques de dotation de la ville d'infrastructures économiques, hôtelières et socio-communautaires de tous genres et à entreprendre des actions dans ce sens. A ces facteurs s'ajoute la volonté politique de faire de Dassa-Zoumè le chef-lieu du nouveau département. Il résulte de ce qui précède un étalement continu de la ville.

Quant à la commune de Glazoué, elle dispose d'un marché international de vivriers classé au troisième rang des marchés du Bénin, après ceux de Dantokpa et de Malanville. Ce marché fait de la ville de Glazoué un centre économique où viennent s'installer les commerçants d'horizons divers. Par ailleurs, Glazoué est une ville dont le centre urbain est encerclé par une multitude de villages agricoles fortement peuplés où les paysans manquent de terres cultivables. Ces derniers sont obligés de s'orienter vers le salariat urbain (Mongbo 2000) ou de migrer (rarement) vers les communes voisines où il existe encore des terres cultivables telles Tchaourou et Savè.

De tout ce qui précède, on note, dans un univers marqué par l'inexistence des limites bien précises entre les communes du Bénin, un emmêlement des espaces des communes.

Approches, méthodes et démarches d'enquêtes de terrain

Approches

La méthodologie de travail a été basée sur une approche globale et pluridisciplinaire qui a intégré plusieurs autres approches :

- l'approche systémique a permis d'aborder globalement le réseau des relations foncier – société – personne, d'avoir une vue d'ensemble des situations-problèmes, d'analyser la façon dont la question foncière est perçue par les différentes communautés, d'étudier les relations de causes à effets entre l'expansion urbaine, la nature des activités agricoles qui sont exercées à la périphérie et leur répercussion sur la dynamique foncière ;
- l'approche participative s'est inscrite dans le cadre de la résolution des problèmes liés à la gestion des ressources naturelles. Elle a permis d'étudier surtout les relations entre les différentes couches de la société chargées de la gestion des ressources naturelles et du règlement des conflits qui y sont liés. Elle a inclus une démarche socio-anthropologique qui a privilégié les rapports sociologiques entre les communautés et les institutions, d'une part, et les rapports entre les institutions d'autre part.

Méthodes

Les enquêtes de terrain sont effectuées sur la base de :

- la méthode d'Enquêtes Collectives d'Identification des Groupes Stratégiques et des Conflits (ECRIS) qui a permis de faire une analyse stratégique des acteurs du foncier et de mieux appréhender leurs logiques et intérêts ainsi que les dysfonctionnements du système ;
- la méthode SWOT qui a permis d'apprécier les forces, faiblesses, opportunités et contraintes des processus de l'expansion urbaine.

Les observations directes

Les observations directes sont effectuées avec l'aide de guides choisis parmi les habitants, les autorités politico-administratives, les agents permanents de l'Etat, les responsables d'ONG des localités retenues. Nous avons visité le terrain pour observer les comportements des individus et groupes, constater comment les acteurs occupent et gèrent l'espace. Cette étape a permis de contrôler et de vérifier directement sur le terrain les anciennes données fournies par quelques documents cartographiques.

Les entrevues

Les enquêtes par questionnaires et guide d'entretien ont été couplées avec des entretiens libres auprès des populations. Cette méthode a confirmé les réponses données aux questions de la méthode précédente. Elle a favorisé l'analyse-diagnostic rural participatif par entretien non directif. L'entrevue d'exploration est placée en amont pour préciser clairement certains aspects sensibles de la problématique. L'entrevue via l'informateur-clé a permis d'écouter des personnes-ressources ayant une compétence spécifique par rapport au sujet. L'entrevue par échantillon est accompagnée d'un questionnaire formel administré auprès des populations des localités retenues à l'avance sur la base des critères définis.

Les obstacles et difficultés de l'étude

Deux obstacles majeurs rencontrés méritent d'être soulignés. Le premier est l'absence de cartes et photos satellitaires pour spatialiser et analyser la dynamique de l'évolution des villes à travers leurs formes et leurs rythmes. Le second est l'absence de documentations fiables sur la création et l'émergence des villes ce qui a été un handicap sérieux pour apprécier l'historique des villes étudiées.

Mais la rigueur de la démarche méthodologique utilisée a favorisé la collecte des données fiables qui ont permis d'analyser et d'apprécier les dynamiques foncières autour de ces villes. Les résultats obtenus sont présentés à travers cinq grandes parties.

La première partie est consacrée à l'aperçu historique de l'émergence des villes étudiées. La deuxième porte sur la législation foncière au Bénin et la gestion du foncier en milieu urbain. La troisième partie est axée sur la question foncière en milieu périurbain. La quatrième partie met en relief le processus d'expansion urbaine dans la dynamique foncière. La dernière partie, enfin, met en exergue la problématique de la gestion décentralisée des ressources foncières.

Aperçu sur l'historique de l'émergence des villes de Dassa-Zoumè, Glazoué, Tchaourou et Parakou¹

On ne peut parler de l'émergence des villes étudiées sans remonter à leur création. Or retracer l'histoire de la création d'une cité est souvent source de polémique en Afrique, faute de documents écrits fiables, contemporains au créateur. Dans le souci de combler tant soit peu les lacunes en complétant ou en enrichissant les informations disponibles sur les récits de la l'émergence et de l'évolution des villes étudiées, nous avons eu recours à des sources orales. Sous cette rubrique, il est question de retracer brièvement l'historique de la mise en place des premiers occupants de chacune des villes, d'analyser les données démographiques actuelles de ces villes et de présenter les fonctions qu'elles jouent.

Essai descriptif de l'historique de la mise en place des premiers occupants des villes étudiées

Historique et évolution des villes étudiées

Dassa-Zoumè

Les premiers occupants de cette localité se sont installés sur le site actuel par vagues successives. Il s'agit pêle-mêle des Eyo-Ijéhoun, des Mamahon, des Egba-Omo Djağoun, des Egba-Omo Iroko aujourd'hui considérés comme des collectivités. Ce site d'accueil montagneux a été favorable à leur installation, en raison de son caractère spécifique exprimé par un relief fait d'un ensemble rocheux

appelé « Chaîne des Idaatcha ». Il présente des escarpements qui créent des grottes disposées en escaliers favorisant ainsi son exploration.

Les premiers occupants étaient au départ des tribus religieuses adoratrices de « Oritchada » encore appelé « Ori sakpata ». L'habitabilité et la religion ont été les principaux facteurs de convergence vers le site.

L'appellation de Dassa-Zoumè vient de la langue « Fon » et signifie « Forêt des Idaatcha ». Mais très tôt, le spirituel a pris le pas sur la deuxième raison de l'installation des populations et lui a conféré le titre de Sanctuaire du sceptre « Ori Daatcha » dont la concrétisation est aujourd'hui l'établissement sur le site de la « Grotte mariale d'Arigbo ». La grotte symbolise la monoïque « Olu Odo » qui est une incarnation humaine du spectre appelé Idaa pour désigner la convergence des religieux sur ce site, ce qui est aujourd'hui une réalité qui confirme le retour de Idaa avec la cession des terres de la grotte mariale. L'ampleur de plus en plus internationale que revêt de nos jours la célébration religieuse sur la grotte mariale d'« Arigbo » constitue une opportunité pour le développement de la ville des Idaatcha.

Glazoué

Des migrations successives des descendants d'Oduduwa partis vers le XIV^e siècle de Tchaki et d'Illaro, régions situées au cœur du pays Yoruba du Nigeria, laissent deviner de l'origine cosmogonique de la ville de Glazoué. Ces descendants attachés à la terre sacrée « Gbomina » ou « Glazoué », du nom du premier occupant Aro Djagui qui signifie Aro Tchaki, étaient à la recherche des terres fertiles (Houngninou 1962). Certains descendants des Aro se sont détachés pour s'installer à Hlassoué (sud de l'arrondissement d'Agouagon) devenu plus tard Glazoué. Le nom « Glazoué » vient donc de « Hlassoué » qui signifie que la « panthère l'a pris ».

La mise en valeur des terres vierges, riches et non rocheuses par les multiples communautés immigrantes du Nigeria et surtout des localités voisines et particulièrement la création de la gare ferroviaire pour l'embarquement des produits vivriers en direction du sud du pays ont favorisé l'installation des populations à Glazoué.

Parakou

Parakou, ville cosmopolite et hospitalière, est la plus grande ville du département du Borgou et du Nord Bénin. Sa population s'est renforcée progressivement avec les migrants baatombu venus du nord du pays et les Yoruba venus de l'est (Nigeria) au XV^e siècle (Thomas 1983). A l'époque coloniale, il y eut l'installation des agents de l'administration, des tirailleurs sénégalais ayant servi sous le drapeau français et des commerçants qui ont fini par s'établir définitivement. L'immigration la

plus importante est celle des populations Adja-Fon qui a commencé au début du XXe siècle par les interprètes et les guides. Elle s'est renforcée progressivement par l'arrivée massive des fonctionnaires d'origine fon. D'autres mouvements migratoires se sont ajoutés avec la naissance, d'une part, des quartiers Alaga et Camp Adagbé et, d'autre part, les rapatriements successifs des Béninois de 1958 (Côte d'Ivoire), de 1963 (Niger), de 1972 (Ghana), de 1978 (Gabon), de 1983 (Nigeria), (PDC, 2004). La mise en place de quelques unités industrielles à Parakou à partir de 1968 drainera une importante vague de main-d'œuvre dans la cité de Koburu.

Tchaourou

Les chasseurs nagots d'origine Tchabè ont été les premiers occupants de l'actuel site de Tchaourou. Leur installation s'explique par la richesse des lieux en terres fertiles et surtout en gibier. Ils ont été rejoints plus tard par les Baatombu du nord pour non seulement les mêmes raisons, mais aussi pendant la conquête coloniale. Aujourd'hui, de nombreux peuples se ruent dans la localité pour non seulement développer l'agriculture, mais aussi pour exploiter ses ressources forestières et profiter du poids du marché du grand centre économique que constitue Parakou. La ville de Tchaourou se situe à 55 km au sud de Parakou. Elle joue aujourd'hui le rôle de grenier pour les populations urbaines de Parakou et dispose de suffisamment d'espace pour l'expansion de cette dernière. Les chances de développement de la ville de Tchaourou résident dans sa proximité avec Parakou dont elle bénéficie déjà des arrières effets de développement.

Des peuplements révélateurs de villes cosmopolites et de conflits domaniaux

Les villes du centre du Bénin qui font l'objet de cette étude bénéficient des peuplements révélateurs de villes cosmopolites. Les populations qui les composent sont d'origines diverses et sont constituées non seulement des peuples nationaux, mais aussi de ceux venus des pays de la sous-région. Ce sont donc des multiconfessionnelles où cohabitent plusieurs groupes ethniques et religieux. On peut distinguer aujourd'hui plusieurs courants migratoires :

- le courant migratoire des immigrants du Bénin méridional qui est aujourd'hui le plus important. Ils occupent les secteurs du commerce, des transports, des services administratifs, de l'agriculture et de l'exploitation forestière ;
- le courant migratoire des colons agricoles qui sont des immigrants de l'Atacora qui s'adonnent dans la plupart des cas à l'agriculture et sont à la recherche permanente des terres fertiles. Ce groupe constitue le deuxième grand groupe d'immigrants des villes du centre du Bénin ;

- le courant migratoire de l'hinterland qui regroupe les immigrants du Borgou-Alibori et dont les plus nombreux proviennent des autres villes comme Pèrèrè, Nikki, N'Dali, Sinendé, Banikoara, Bembèrèkè, etc. Ils viennent profiter des services, de la formation, du commerce et des emplois que leur offre Parakou, mais aussi développer la culture du coton, suite à l'appauvrissement de leurs terres et ;
- le courant migratoire des immigrants étrangers venus du Niger, du Nigeria, du Ghana, du Burkina Faso, du Mali, du Sénégal ou des autres pays de la sous-région qui viennent s'installer pour bénéficier surtout des atouts économiques de ces villes en s'adonnant surtout aux activités commerciales ;
- des migrations internes issues des décisions politiques des dirigeants au sommet de l'Etat depuis les indépendances sous le régime du premier président, Hubert Maga. Ces décisions ont consisté à la délocalisation des populations des villages éloignés des principaux axes routiers qui desservent les villes de l'ensemble du territoire national dans le but de rayer leur enclavement et pour bénéficier des infrastructures socio-communautaires telles que l'école, le centre de santé, les puits, etc. Si cette démarche a permis le regroupement des populations à l'époque, elle soulève aujourd'hui des conflits domaniaux entre les populations des villages délocalisés et celles des villages hôtes qui sont tous devenus soit des quartiers de ville ou des villages périurbains.

Ces immigrations ont fait particulièrement des villes concernées par l'étude, des villes cosmopolites dont l'importance démographique des principaux groupes socioculturels qui les peuplent se présente, selon l'Atlas monographique des communes du Bénin, comme suit :

- Parakou : Baatombu (29,40%), Fon (18,7%), Yoruba (14,9%), Dendi (15,4%), Ottanmari (5,4%), Peuhl (4,4%), Yom-Lokpa (5,1%) et Autres (3,8%) (Atlas 2001).
- Tchaourou : Baatombu (34,2%), les Peulhs (18,9%), les Nagots (15,8%), les Bètammaribè (12,9%), les Lokpa (10,9%) et les Fons et apparentés (04%) (MOUSTAFA, R ; 2005).
- Glazoué : Fon (49,1%), Adja (0,7%), Yoruba (48,8%), Peulh (2%), Bètammaribè (1,7%), Yom-Lokpa (1,4%), Dendi (0,4%) et autres (1,6%).
- Dassa-Zoumè : les Fon (49,2%), les Yoruba (44,9%), les Peulhs (2,3%), les Yom-lokpa et Bètammaribè (0,9%), les Dendi (0,3%), les Baatombu (0,2%) et les autres (1,5%).

Chacun de ces groupes ethniques possède une identité culturelle propre qui, jadis, se révélait lors des grandes manifestations. Mais sous le poids de la démographie et du brassage culturel, ces différences s'estompent lentement au profit d'une identité populaire reposant beaucoup plus sur des réalités citadines.

La dynamique démographique des villes du centre Bénin

Dans le cadre de cette étude, c'est le taux d'accroissement qui permet d'apprécier l'évolution démographique des quatre villes. Entre 1992 et 2002, le taux moyen annuel d'accroissement pour l'ensemble de ces villes est de 3,96 pour cent. Si les villes de Parakou, de Glazoué et de Dassa-Zoumè ont un taux moyen annuel inférieur à cette moyenne, il faut remarquer que la ville de Tchaourou, en revanche, enregistre le plus fort taux qui se situe en dessus de la moyenne. Ainsi, pendant que Parakou, Glazoué et Dassa-Zoumè enregistrent respectivement 3,8 pour cent, 3,40 pour cent et 3,55 pour cent comme taux moyen annuel, celui de Tchaourou est de 5,14 pour cent. La situation de Tchaourou pourrait s'expliquer par l'installation massive et continue des colons agricoles et des exploitants forestiers depuis les années 1980.

Cette importance démographique fait de Parakou, selon la nomenclature urbaine actuelle du Bénin, la troisième ville à statut particulier² après Cotonou et Porto-Novo, alors qu'en 1956, elle occupait le septième rang au niveau national. Dans le même temps, les villes de Dassa-Zoumè, Glazoué et Tchaourou sont classées parmi les villes à statut ordinaire³ ou villes secondaires du pays. Les facteurs explicatifs de cette dynamique démographique sont abordés plus loin. A présent, il serait intéressant d'étudier les fonctions de ces villes.

Les fonctions urbaines des villes du centre Bénin

Les villes du centre du Bénin se caractérisent par leur multifonctionnalité. Elles jouent différenciellement des fonctions administratives, politiques, commerciales, économiques, industrielles, touristiques, etc.

La fonction politico-administrative

Elle est la première fonction attribuée à ces établissements humains pour servir de chef-lieu des entités administratives depuis le temps colonial. En effet, pendant la colonisation, Parakou et Dassa-Zoumè ont joué le rôle de chef-lieu de canton ou de cercle. Après la colonisation, suite aux nombreuses réformes, Dassa-Zoumè, Glazoué et Tchaourou ont été érigées successivement en chef-lieu de district rural, en sous-préfecture et en commune ordinaire. Pendant ce temps, Parakou est devenu successivement chef-lieu de district urbain, de circonscription urbaine et de commune à statut particulier.

Cette fonction leur a valu l'implantation de quelques équipements pour jouer pleinement le rôle d'encadrement politico-administratif. Depuis longtemps, Parakou joue aussi le rôle du chef-lieu des départements du Borgou et de l'Alibori et abrite, de ce fait, toutes les directions départementales des services déconcentrés de l'Etat. C'est ce rôle que convoient Dassa-Zoumè et Glazoué pour le nouveau département des Collines.

Depuis l'avènement de la décentralisation, ces villes ont commencé à jouer une nouvelle fonction, celle de l'assainissement, de l'urbanisme qui relèvent de la compétence propre des communes. Plusieurs projets et programmes sont à cet effet élaborés. Il s'agit par exemple du Programme de Gestion Urbaine Décentralisée (PGUD) dont bénéficie la ville de Parakou depuis 2002 et du projet ayant installé le Registre Foncier Urbain (RFU) dont la forme simplifiée est mise en œuvre à Dassa-Zoumè.

La fonction industrielle

Seule la ville de Parakou joue réellement cette fonction qui s'est développée au cours des vingt dernières années. Elle se matérialise par la présence de plusieurs unités industrielles telles que la Société Nationale pour la Production Agricole (SONAPRA) à travers l'implantation des deux usines d'égrenage de coton, le Complexe Textile du Bénin (COTEB), la Société Béninoise de Brasserie (SOBEBRA), la Coopérative Béninoise de Matériel Agricole (COBEMAG), etc. Par ailleurs, il faut signaler la présence à Glazoué de l'Usine d'égrenage de coton dont l'installation remonte à la période coloniale.

Les fonctions commerciales et économiques

De par leur position de carrefour, les villes du centre Bénin jouent un important rôle d'échanges commerciaux et constituent, de ce fait, de véritables pôles économiques. C'est le cas de Parakou et de Glazoué dont les marchés ont un rayonnement international. Ces marchés accueillent d'importants commerçants grossistes de produits finis importés de l'extérieur et ravitaillement des petits centres commerciaux du Bénin et des pays voisins. De la même manière, ils constituent des marchés de regroupement et de redistributions des produits agricoles locaux. Ville-relais, Parakou est le terminus de la voie ferrée en provenance de Cotonou. Elle constitue aussi un important carrefour international entre le Niger, le Togo, le Burkina-Faso et le Nigeria. Aussi note-t-on l'implantation de nombreuses banques à Parakou et un peu moins à Dassa-Zoumè attirant ainsi des investisseurs.

La fonction touristique

En matière de tourisme, la ville de Dassa-Zoumè occupe le premier rang au regard de l'importance de l'afflux des touristes qu'elle draine chaque année surtout à l'occasion du pèlerinage marial depuis 1954. Ce lieu de pèlerinage marial accueille des fidèles catholiques et des touristes en provenance de tous les pays du monde. Pour jouer pleinement ce rôle d'accueil des pèlerins, beaucoup d'opérateurs économiques privés investissent énormément pour la mise en place des infrastructures socioéconomiques et hôtelières.

Sur le plan scientifique

La ville de Parakou est la seule qui répond à cette fonction. Depuis 2001, elle est devenue le premier pôle universitaire de la région septentrionale du pays. Il importe de dire que la ville de Dassa-Zoumè est aussi appelée à jouer dans un proche avenir ce rôle avec l'identification du site devant abriter son université.

Conclusion partielle

Le développement qui vient d'être consacré à l'historique de l'émergence des quatre villes qui font l'objet de cette étude montre clairement que celles-ci ne sont pas créées de toutes pièces. Simples établissements humains au départ, ces villes ont connu par la suite d'importants et divers flux migratoires qui leur ont conféré aujourd'hui leur caractère cosmopolite et l'importance de leur poids démographique. Aussi leur position géographique de carrefour et leur fonction politico-administrative ont-elles joué un rôle très favorable à leur croissance. Cette expansion ne se fait pas sans soulever d'énormes problèmes, dont le plus crucial est relatif à la gestion foncière dans leurs périphéries. Ces problèmes sont révélateurs de la nature de la législation foncière au Bénin qu'il importe d'analyser pour mieux les appréhender.

Législation foncière et gestion du foncier urbain au centre du Bénin

La gestion foncière au Bénin est régie à la fois par les droits coutumiers et les droits modernes dont les textes datent du temps colonial et post-colonial. Les modes de gestion du foncier instaurés par les communautés avant la colonisation sont jadis résumés dans le « Coutumier du Dahomey ». Les dispositions juridiques relatives au foncier et qui résultent de la colonisation relèvent du droit positif contenu dans le Code civil. Dans quelles conditions ces deux régimes fonciers ont-ils évolué ? Pourquoi la coexistence de ces droits coutumiers et positifs rend-elle floue la gestion du foncier et crée-t-elle par surcroît l'insécurité foncière très aiguë, surtout en milieu urbain et périurbain ? Il est évident qu'en droit positif, il n'existe aucune spécificité qui permette de traiter à part un « droit foncier urbain » qui serait différent d'un « droit foncier » tout court. Mais comment les nombreux problèmes spécifiques liés à l'application du droit foncier en milieu urbain sont-ils réglés ?

Pour mieux appréhender toutes ces questions, il importe d'analyser l'évolution de la législation foncière au Bénin depuis la période pré-coloniale, d'en dégager les dispositions juridiques qui permettent de gérer au mieux les problèmes du foncier urbain et de présenter les outils de gestion expérimentés à cet effet.

La législation foncière au Bénin des origines à nos jours : une cohabitation confuse entre droits coutumiers et droits positifs

Le régime coutumier : fondement et organisation foncière au centre Bénin

L'analyse du régime foncier coutumier au Bénin exige l'analyse des spécificités d'une infinité de groupes ethniques. Pour cette étude sommaire, on se contentera de rester dans la généralité. Car les différentes ethnies, malgré quelques particularités liées à leur organisation sociale, présentent une similitude dans leur fondement culturel et leur environnement matériel. Nous aborderons ici le fondement de ce régime foncier et la forme d'organisation spatiale induite.

Par rapport au fondement politico-religieux, il faut noter que le régime foncier coutumier se détermine par la religion et l'organisation sociopolitique des communautés. L'un des éléments essentiels du fondement religieux de ce régime foncier est le culte des ancêtres. La présence des morts reste vivante dans la société tant par la fonction de protection reconnue aux ancêtres trépassés que par la crainte qu'éprouvent les hommes à mécontenter leur mémoire. C'est aux ancêtres qu'on s'adresse avant d'entreprendre toute activité d'intérêt commun ou personnel. Les vivants ne sont que des usufruitiers de la terre qui ne leur appartient pas. Généralement, on donne le titre de « chef de terre » à celui qui en est le responsable. Il constitue le trait d'union entre le monde invisible des ancêtres et des vivants. Conscient de son rôle, il se garde d'aliéner les terres léguées par les ancêtres à la communauté sous peine de s'attirer des malheurs.

Quant au fondement politique, il se rapporte à la famille qui constitue le cadre dans lequel s'inscrivent les institutions coutumières. Et c'est le chef de famille ou du clan qui détient le pouvoir de commandement, donc le pouvoir politique. Lorsque la famille ou le clan s'allonge, le chef peut déléguer ses pouvoirs aux aînés des nouveaux lignages. Dans le cas d'un royaume ou d'une chefferie, ce rôle est dévolu à un dignitaire qui joue la fonction du ministre de l'administration territoriale auprès du roi ou du chef. Cette organisation politique soumet tout membre du groupe à la solidarité vis-à-vis de l'ensemble de la communauté.

L'organisation d'un domaine suppose avant tout sa possession par un organisateur. Le chef de terre a uniquement le rôle d'administrateur, et ne peut prétendre en aucun cas à être le propriétaire. C'est à lui que revenait la tâche de répartir le domaine clanique entre les membres de la famille. Le patrimoine foncier est avant tout une propriété collective. Sa répartition répond aux fonctions socioéconomiques que remplissent les terres dans la vie traditionnelle. En dehors de l'espace réservé à l'habitation, il y a l'espace consacré aux champs et le reste constituait le domaine collectif où se pratiquaient les activités telles que la chasse, la pêche, etc. De façon générale, c'est le défrichement qui fonde le contrôle foncier, c'est l'exploitation du sol, sa mise en valeur, qui justifie la pérennité de la tenure. Tout membre de la communauté a accès à l'utilisation du sol en fonction

de sa capacité de travail et de ses besoins. L'abondance des terres, la conception inaliénable de son usage étaient telles que, tout risque écarté, même un étranger avait la possibilité de trouver une place dans le domaine foncier. L'organisation foncière par le régime coutumier consolide, de ce fait, la base de la citoyenneté par la jouissance du droit foncier. C'est sur ce fond du régime foncier coutumier, qui a aujourd'hui connu de profondes mutations, qu'est venu se greffer le régime foncier moderne avec la colonisation.

Le régime foncier moderne : fondement et organisation foncière

A l'issue de la conférence de Berlin (de novembre 1884 à février 1885) qui a consacré le partage de l'Afrique entre les puissances européennes, la France a entrepris la conquête et l'occupation du territoire de l'actuel Bénin (Dahomey jusqu'en 1975).

A une période pré-coloniale a succédé une période coloniale puis post-coloniale caractérisée par la « modernisation » du régime foncier traditionnel et l'introduction de procédures dont le but principal est de lutter contre le collectivisme agraire en favorisant l'appropriation privée des terres (Gbaguidi 1997:44-45).

L'Etat, aussi bien pendant qu'après la colonisation, a toujours tenté de contrôler les terres. Pour ce faire, il s'est appuyé sur diverses constructions juridiques dont les fondements théoriques et leur impact sur le régime précédent sont ici analysés.

Pour réaliser ses objectifs de développement, l'Etat a revendiqué les terres non immatriculées dont il s'est emparé en recourant successivement à la *théorie de la succession des Etats* puis à la *théorie des terres vacantes et sans maître*.

Dans les colonies comme le Bénin où régnait une organisation pré-coloniale étatique ou quasi étatique, l'administration coloniale brandit la *théorie de la succession d'Etats* pour s'emparer des terres des autochtones. Selon cette théorie, les souverains locaux étaient les véritables propriétaires des terres. Par conséquent, celles-ci devaient revenir en propre à la puissance conquérante au nom de la théorie de la succession d'Etats. C'est en vertu de cette théorie que le nouvel Etat colonial succédait aux droits des souverains locaux considérés comme les maîtres absolus des terres de leur royaume et chefferie. Mais cette théorie sera condamnée par la Cour de l'AOF (Afrique Occidentale Française) dans un arrêt de principe en date du 10 mars 1933. La raison était que les souverains locaux, même s'ils avaient des droits exorbitants sur les terres, étaient des détenteurs sans titre. Ils ne pouvaient pas légitimement transmettre leurs droits abusifs à un Etat civilisé (Cour d'Appel de l'AOF, 10.3.1954, Penant 1933, I:252). Cette théorie a été abandonnée au profit de la *théorie des terres vacantes et sans maître*.

Celle-ci a été inspirée par les articles 538 et 539 et 713 du Code civil et introduite par le décret du 15 novembre 1935 (Dar. 1936, lég : 198). L'article 1 de ce décret

prévoyait que *les terres vacantes et sans maître appartenaient au domaine de l'Etat*. Or, pouvaient être assimilées aux terres vacantes et sans maître toutes les terres non immatriculées, non détenues selon les règles du Code civil ou non constatées selon la procédure de « constatation des droits fonciers coutumiers » instituée par le décret de 1925. En outre, étaient assimilées aux terres vacantes et sans maître celles non exploitées depuis plus de dix ans. Par conséquent, une bonne partie des terres détenues coutumièrement entraient dans la catégorie des terres vacantes et sans maître et faisaient partie, tout au moins théoriquement, du domaine de l'Etat. Que devenaient les terres longuement mises en jachère, les terres de réserve et les forêts sacrées qui caractérisaient le système culturel généralement pratiqué par les autochtones ? Les contradictions de cette théorie obligèrent l'administration coloniale à la réaménager par le décret de 1955 (J.O.R.F. 21.5.1955 : 5080) et le décret de 1956 (J.O.R.F. du 18. 7. 1956 et rectific. du 17.8. et du 15.9.1956). Elle sera relayée par la théorie du développement, nouvelle justification de la volonté d'accaparement des terres par l'Etat.

Pour acquérir des terres pour ses projets d'investissements, l'Etat peut incorporer à son domaine privé des zones émergées, des terres gagnées par remblayage de zones marécageuses ou des terres abandonnées. En outre, il y parvient aussi par expropriation. Celle-ci peut être régulière (expropriation pour cause d'utilité publique) ou rampante (expropriation des terres presque sans indemnité par la technique des périmètres dits d'aménagement rural et le permis d'habiter).

L'organisation administrative, après le découpage territorial, est le point de départ de la remise en cause du régime foncier coutumier. Car, avant la conquête coloniale, le territoire actuel du Bénin était marqué par diverses formes d'organisation territoriale, notamment les royaumes, les chefferies, comme par exemple le royaume de Parakou et de Dassa-Zoumè. Le statut de la terre a été modifié avec l'élaboration des lois et décrets sous le code civil français qui est venu introduire un nouveau paysage juridique. Il en a découlé l'instauration des droits positifs qui ont déterminé les types de propriétés au nombre desquels il y a le domaine public et le domaine privé.

Le domaine public, non susceptible de faire l'objet d'une propriété privée, est défini par un texte de 1928. Il inclut en particulier une bande de 100 m à partir du rivage de la mer et impose un droit de passage de 25 m le long des rives, des lacs et des lagunes. Ces dispositions générales ne correspondent à aucune délimitation précise sur le terrain, bien que cette délimitation ait été prévue par un ancien texte, et elles n'empêchent pas que les terrains en cause soient souvent bâtis et utilisés privativement. Des dispositions particulières concernent l'usage des forêts de l'Etat qui sont considérées comme faisant partie du domaine public.

En droit positif, les terres vacantes et sans maître peuvent être prises par l'Etat ainsi que les terres inexploitées ou inoccupées depuis plus de dix ans. Ce délai est porté à trente ans pour les terrains abandonnés ayant déjà fait l'objet d'un

titre foncier et sa mise en œuvre nécessite alors une procédure particulière (art. 82 de la loi du 14 août 1965). Le domaine privé de l'État peut être vendu ou faire l'objet de concessions. Potentiellement, les propriétés de l'État sont donc considérables, à la condition qu'il les immatricule à son nom. En pratique, il ne le fait pas, et les vieilles immatriculations de terrains publics couvrent des espaces dont les limites sont difficiles à reconstituer. La délimitation du domaine privé de l'État, stricto sensu, est incertaine. Ces terrains ne font d'ailleurs l'objet d'aucune gestion rationnelle en vue de leur mise en valeur. De façon générale, les différentes procédures juridiques utilisées pour exproprier les autochtones ont permis à l'État de devenir « chef de terre », c'est-à-dire seul véritable propriétaire des terres dont il pourra s'emparer à tout moment.

Convaincu de son rôle de promoteur de développement, l'État a opté pour une politique de création des périmètres d'aménagement rural. Il fallait promouvoir une agriculture dite moderne par la diffusion de systèmes culturaux à forte productivité (création d'un secteur de Rénovation de la Palmeraie à partir de 1947) pour ravitailler la métropole. Après l'indépendance, les dirigeants du pays ont poursuivi dans la même lancée en créant, surtout à partir de 1975, des Fermes et Sociétés d'État auxquelles de vastes terres jugées incultes ont été affectées et dont l'exploitation a assujéti les paysans riverains des zones déclarées « périmètres d'aménagement rural ». Par ailleurs, signalons que cette visée de promotion de développement est aussi à l'origine de la création, à l'instar de la métropole, des Services des Eaux et Forêts pour gérer les parcs nationaux et les forêts classées.

De ce qui précède, il serait intéressant d'analyser les conséquences du greffage du régime foncier moderne sur celui coutumier pour comprendre la situation actuelle en ce qui concerne les rapports sociaux et la gestion des ressources foncière, au Bénin en général et dans les localités étudiées en particulier.

L'interférence de plusieurs logiques d'appropriation foncière comme conséquence de la cohabitation des droits coutumiers et positifs

La cohabitation des régimes fonciers coutumier et moderne a introduit de profondes mutations dans le système longtemps basé sur la gestion collective des ressources naturelles. Par conséquent, les pratiques agraires intégrées dans les logiques d'appropriation se transforment. Ce changement se répercute inéluctablement sur les rapports sociaux et sur la nature. Actuellement, on peut distinguer trois logiques d'appropriation foncière au Bénin : la logique étatique, la logique marchande et la logique coutumière en crise.

La logique étatique est consacrée par la loi du 14.8.1965 en vigueur aujourd'hui au Bénin et dont l'origine remonte au temps colonial. En effet, cette loi dérive du décret du 26.7.1932. C'est une loi qui rejette la propriété collective du régime foncier coutumier et favorise l'appropriation privée par la procédure de l'immatriculation, du permis d'habiter et du titre foncier. Des dispositions n'ont-elles pas été prises pour

consolider l'emprise individuelle sur les terres qui devraient par la suite devenir des biens interchangeables et aliénables sans restriction comme tout autre bien (Gide et Chabas cités par Gbaguidi 1995) ?

En même temps que ces procédures permettent à l'Etat de s'accaparer des terres, elles ont instauré la logique marchande. L'appropriation des terres par l'immatriculation, encouragée sans prendre des précautions, a conduit à la spéculation et à la thésaurisation foncières. Dans ces conditions, force est de constater la faveur dont jouissent les élites et autres citadins qui se lancent dans l'achat massif et l'immatriculation de vastes domaines en milieu rural ou dans les banlieues des grandes agglomérations. Ce fait justifie, tant soit peu, la contrainte foncière au sud du Bénin et l'apparition du phénomène nouveau de « paysan sans terre ». Ce phénomène qui soulève la question de la citoyenneté et de la territorialité se pose avec acuité dans le sud Bénin. Ces derniers sont contraints de migrer comme colons agricoles, le plus souvent en direction du centre Bénin qui est devenu la principale région d'accueil à l'échelle nationale.

A travers les nombreuses procédures juridiques, l'État se fait véritable propriétaire des terres et remet en cause le régime foncier coutumier. Au nom de ce principe, certains immigrés colons agricoles sont encouragés par les élites de leur milieu d'origine à s'approprier subtilement les terres des autochtones, soit par achat, soit par les cultures pérennes. Toutefois, les autochtones continuent, autant que faire se peut, d'exercer leurs droits coutumiers sur les terres dont ils ont encore le contrôle. Cependant, il faut faire remarquer que la logique coutumière est en déliquescence totale et reste le maillon faible de la chaîne.

Dans cette interférence des logiques concurrentes, la vraie question se pose en termes de qui possède réellement la terre au Bénin. Le moins que l'on puisse dire, c'est que le flou juridique occasionne des changements dans le système traditionnel de gestion des ressources foncières.

En effet, les droits fonciers coutumiers tels que présentés plus haut et résumés autrefois dans le « Coutumier du Dahomey » forment aujourd'hui un ensemble hétérogène dans lequel il est utile de distinguer deux composantes : les anciens droits coutumiers traditionnels et des pratiques modernes qui n'ont de « coutumières » que le fait de ne s'appuyer sur aucun droit écrit (Comby 1998).

Ces coutumes, qui correspondaient au fonctionnement d'une société de type féodal et non monétaire, ne sont plus en vigueur que dans certaines zones rurales et en partie seulement. Le plus souvent, leur fonctionnement est altéré du fait du développement de la monétarisation de la société et des progrès de l'individualisme. On peut donc se demander si le recueil de 1931 est toujours d'actualité, même si l'on cite quelques jurisprudences récentes qui y font toujours référence.

De ce qui précède, on note une mutation des droits coutumiers traditionnels qui donnent naissance au droit coutumier moderne. En effet, au contact de

l'urbanisation, se développe une sorte de propriété coutumière moderne, qui n'est pas une vraie propriété au sens juridique, dans la mesure où elle n'est pas reconnue par le droit positif, mais qui est plus qu'une simple possession puisque les mutations à titre onéreux s'y pratiquent de manière courante. Ces ventes sont ignorées par la loi sans être formellement interdites. Elles sont reconnues et même enregistrées par l'administration. Sur cette base, des actes de vente de droits fonciers d'origine coutumière sont rédigés sous seing privé, sur des formulaires disponibles dans les mairies, avec les signatures des témoins. Joseph Comby (1998) a relevé une série de confusions qui est récurrente dans le domaine foncier au Bénin :

- la propriété est traditionnellement lignagère dans son esprit. Selon cette conception, la génération actuelle n'est que la gérante des terrains. Elle n'a pas le droit d'en disposer. La terre est incessible, un peu comme est incessible le territoire d'un État. Les enfants peuvent donc toujours revendiquer l'application de ces règles traditionnelles pour tenter de faire annuler une ancienne vente en faisant valoir que leurs parents n'avaient pas pu avoir le droit de vendre ;
- sans s'aligner sur cette position extrême, il est parfois difficile de savoir si l'individu qui utilise un terrain a le droit d'en disposer. C'est-à-dire, s'il a le droit de le vendre à quelqu'un d'autre ou s'il n'est que le gérant de biens familiaux. En termes de droit moderne, c'est le problème classique de la confusion entre le patrimoine d'une indivision commune à plusieurs cohéritiers et le patrimoine individuel du représentant de l'indivision ;
- une troisième difficulté tient au mode de mise en culture des terres par rotation, dans le centre et le nord du pays en particulier. Comment distinguer une jachère de six ou même dix ans d'un terrain abandonné ?
- la question de la superposition de plusieurs droits d'usages traditionnels sur les mêmes terres, peut encore se poser. On la rencontre en particulier, là encore, dans le centre et le nord du pays, principalement entre éleveurs et cultivateurs utilisant les mêmes espaces à des époques différentes ;
- une dernière confusion possible est celle qui existe entre cadeau d'allégeance et prix de vente. L'étranger au lignage primitivement propriétaire du territoire, qui obtient, en échange d'un « cadeau », le droit d'utiliser un terrain, a-t-il pour autant acheté le terrain ? N'a-t-il pas, au contraire, parce « cadeau », marqué son allégeance envers le lignage qui avait la maîtrise primitive du sol ?

Il est important de souligner que l'application de cet ancien droit coutumier est souvent revendiquée pour défendre des intérêts financiers très modernes. Et c'est surtout dans les périphéries des villes, là où les terres prennent rapidement de la valeur, qu'on rencontre par exemple des héritiers qui tentent de faire reconnaître l'incessibilité de la propriété lignagère traditionnelle, pour faire annuler une ancienne vente. Les coutumes n'ayant pas été supprimées par la promulgation du

code civil, il a fallu un moyen pour régulariser les nombreuses ventes de terrains. Du point de vue de l'organisation foncière, le Code civil français se révélait inadapté.

Au regard de tout ce qui précède et pour mieux appréhender la dynamique foncière à la périphérie des villes du centre Bénin, il est important d'analyser d'abord la situation qui prévaut à l'intérieur de ces villes. Car le comportement du marché foncier au centre-ville, à notre avis, est une donnée fondamentale pour bien comprendre le fonctionnement à la périphérie.

Les dispositions juridiques face à la question foncière au centre-ville

En droit positif, il n'existe aucune spécificité qui permette de traiter à part un « droit foncier urbain » qui serait différent d'un « droit foncier » tout court. Cependant, des dispositions juridiques liées aux spécificités des droits fonciers en milieu urbain existent et méritent d'être analysées.

Des dispositions juridiques liées aux spécificités des droits fonciers en milieu urbain

L'inadaptation du code civil au contexte urbain est à l'origine de nouvelles législations foncières à partir de 1960. Dès lors, le régime foncier moderne va engendrer deux autres régimes : le régime du permis d'habiter et le régime d'immatriculation.

Le *permis d'habiter* est établi par la loi 60-20 du 13 juillet 1960 et le décret 64-276 du 2 décembre 1964. Au regard des dispositions de cette loi, le permis d'habiter est l'acte par lequel l'administration autorise son détenteur à occuper une parcelle de terrain issue du morcellement d'un domaine préalablement immatriculé au nom de l'Etat. Si, en principe, le permis d'habiter est un titre personnel, précaire et essentiellement révocable, dans la pratique, il fonctionne comme un véritable titre de propriété. En se fondant sur la loi 60-20 du 13 juillet 1960 et son décret d'application, on peut affirmer que le titulaire du permis d'habiter n'a pas de droit de propriété définitif sur la parcelle afférente, objet dudit permis d'habiter, il n'a qu'un simple droit de jouissance.

Dans le droit positif béninois, il n'existe pas de véritable propriété du sol sans titre foncier. Lui seul confère à son titulaire le droit de disposer librement de son terrain, c'est-à-dire de le vendre valablement. Sur le plan juridique, aucune prescription acquisitive ne peut jouer contre un titre foncier. Au titre foncier s'ajoute le permis d'habiter.

En droit positif, les permis d'habiter (PH) ne confèrent à leurs bénéficiaires qu'un droit personnel, précaire et révocable, d'habiter sur un terrain appartenant à l'État. Légalement, ils ne doivent donc s'appliquer que dans le cadre de lotissements de terrains préalablement immatriculés au nom de l'État. La procédure de délivrance des PH est d'ailleurs menée par l'administration, dans le cadre de sa gestion des terrains de l'État et ne relève que du droit administratif.

Les textes prévoient que la taille des parcelles attribuées est limitée aux besoins de l'habitation d'une famille et qu'il ne doit être accordé qu'un seul permis d'habiter (exceptionnellement deux) par ménage. La première obligation du bénéficiaire d'un permis d'habiter est de clôturer son terrain dans les trois mois qui suivent son attribution ; il doit l'occuper lui-même ou le faire occuper par un proche (art. 5 du décret). La loi prévoit même qu'une parcelle non occupée pendant six mois peut être reprise sans indemnisation par l'administration et accordée à une autre famille. Enfin, le permis d'habiter restant un droit personnel, en cas de décès du titulaire, un nouveau permis doit être demandé, en indivision, par les héritiers.

N'étant pas, juridiquement, des droits de propriété mais seulement des droits d'occupation d'un terrain public, les permis d'habiter ne peuvent être hypothéqués. Ils peuvent cependant être « mis en gage », ce qui revient au même, auprès d'un organisme de prêt à l'habitat (art. 16). Il est prévu que le titulaire d'un permis d'habiter ne peut devenir propriétaire de la parcelle qu'après achèvement de la construction et constatation de sa « mise en valeur » par une commission administrative de cinq membres et un président (art. 14).

L'immatriculation, quant à elle, est organisée par la loi 65-25 du 14 août 1965 portant régime de la propriété en République du Dahomey. Elle permet le principe de corriger les lacunes et les insuffisances des régimes coutumiers et du permis d'habiter. L'immatriculation concerne les biens appartenant au domaine privé de l'Etat ou aux particuliers. Sa procédure débouche sur la délivrance du titre foncier qui est le seul qui confère au Bénin le droit de la propriété foncière. Logiquement, elle devrait permettre de passer du régime coutumier au régime de droit moderne pour mettre fin au dualisme juridique.

En dépit de toutes ces dispositions juridiques, les villes étudiées sont marquées par l'insécurité foncière dont les manifestations sont ici mises en relief à travers leurs causes et leurs conséquences.

L'insécurité foncière en milieu urbain : causes et conséquences

La question foncière dans les villes se pose ici en termes d'insécurité. Cette insécurité est due à la non détention des titres de propriété fiables et inattaquables, et à la quasi inexistence de documents appropriés faisant l'inventaire de toutes les propriétés foncières et de leurs ayants-droit. Elle est aussi le fait des lacunes aussi bien juridiques, administratives que des pratiques sociales.

Dans la pratique administrative et sociale actuelle, en dépit du droit positif, le permis d'habiter est devenu un pseudo-titre de propriété, une sorte de titre foncier au rabais. Il est généralement délivré à l'issue des procédures de remembrement de terrains coutumiers précédemment morcelés et non pas sur des terrains de l'Etat. En outre, alors qu'il est formellement prévu dans les textes que les permis d'habiter ne sont pas cessibles, les terrains en cause font l'objet d'un marché reconnu par l'administration.

Au Bénin, il est à constater que le droit foncier positif est fort peu respecté non seulement par la population, mais, ce qui est plus grave, par l'administration elle-même et, dans certains cas, par les magistrats qui préfèrent parfois juger selon leur propre idée de l'équité que selon des textes désuets (Comby 1998). Une telle situation tient, avant toute autre considération, à un facteur extrêmement simple : la loi n'est pas accessible au public. Les juristes s'appuient souvent, à défaut d'une autre documentation disponible, sur des manuels de droit français, la plupart des principes juridiques étant restés communs. Mais cette similitude n'existe précisément pas dans le domaine du droit foncier. En la matière, les anciens principes du droit colonial, toujours en application pour l'essentiel, ont en effet toujours été diamétralement opposés à ceux qui étaient et sont encore appliqués en France. Les interférences entre les deux droits ne peuvent qu'engendrer des incohérences. Face à tout ce désordre, les conséquences ne peuvent qu'être nombreuses et insurmontables.

Tout d'abord, on enregistre de nombreux litiges domaniaux qui opposent les prétendus héritiers d'un patrimoine foncier. Ces conflits surviennent surtout lors du partage d'un patrimoine foncier laissé en héritage par un parent défunt. Ces conflits se manifestent également à travers de fréquentes remises en cause des droits des acquéreurs de parcelles par les héritiers de leurs vendeurs. En effet, pour éviter des problèmes à leur progéniture, certains propriétaires vendent, avant leur décès, leur domaine dans des circonstances parfois peu régulières et mettent ainsi en difficulté l'acquéreur. Mais des années plus tard, cet acquéreur est sommé de quitter le domaine ou l'immeuble. Un des indicateurs flagrants de ces conflits constitue les écrits ou *gravicis* que portent des domaines en des termes tels que : « terrain litigieux à ne pas vendre ».

Ensuite, il y a la spéculation foncière et immobilière galopante à l'intérieur des villes. La spéculation foncière se fait surtout par rapport aux parcelles achetées depuis des années et inoccupées, qui sont mises en vente par leurs propriétaires pour faire face à leurs problèmes financiers. Ces parcelles sont au départ achetées à des prix insignifiants, sans besoin réel de les construire, mais plutôt de façon anticipative pour des fins spéculatives des années plus tard. C'est une forme d'investissement à long terme qui est encouragée par l'inapplication des textes de lois. Car, en ville, une parcelle abandonnée ou inoccupée pendant six mois devrait être retirée à son propriétaire, surtout si celui-ci ne dispose pas d'un titre foncier. Le non-respect de ces dispositions juridiques encourage ce phénomène qui se manifeste par la prolifération du foncier non bâti au cœur des villes qui deviennent des dépotoirs sauvages. Or, plus leur coût d'acquisition est élevé, plus le coût de revient de leur mise en valeur est onéreux et, par conséquent, le foncier bâti mis en location devient cher et provoque la spéculation immobilière.

En effet, plusieurs facteurs favorisent la spéculation immobilière en ville au nombre desquels il y a le coût élevé de la construction qui est lié surtout à la

spéculation sur les prix des matériaux. Cette spéculation est souvent entretenue par les commerçants qui créent des pénuries artificielles pour flamber les prix de façon exagérée au nom du libéralisme économique. De la même manière, l'arrivée massive des migrants, notamment les Ibos qui font la surenchère, est un autre facteur de spéculation immobilière dans les villes. A cela s'ajoutent les problèmes sociaux inhérents à la cohabitation très difficile entre propriétaires et locataires et même entre locataires. Après quelques années passées en location, les citadins sont à bout de souffle et choisissent de regagner leurs propres parcelles acquises à la périphérie. Et c'est là que l'assertion populaire très répandue au Bénin « Nul ne vaut le chez-soi » trouve toute sa justesse. La location, à travers les frais du loyer, est taxée de « tontine non remboursée » aux locataires qui sont pressés de quitter ce statut. La conséquence directe est l'extension incontrôlée des espaces périurbains non lotis. Il y a aussi l'occupation illégale et anarchique des domaines publics et des zones impropres à l'habitation encouragée par l'impunité.

Aussi importe-il de souligner la pratique très répandue du lotissement tardif dans les villes du Bénin. Ce phénomène s'explique par l'absence de politique d'urbanisation qui anticipe sur l'occupation des espaces par des habitations. Très peu de quartiers dans les villes étudiées ont bénéficié d'un lotissement régulier. Les lotissements proprement dits sont prévus par les textes, mais il n'en existe pratiquement pas au Bénin, si l'on entend par « lotissement » une opération d'aménagement menée sur un terrain lui appartenant (donc disposant d'un titre régulier), par un propriétaire public ou privé qui, après avoir obtenu une autorisation de lotir, viabiliserait son terrain pour le diviser en lots destinés à être vendus comme terrains à bâtir. Le retard dans cette opération expose les citadins au déguerpissement ou au délogement généralement sans dédommagement, offrant des spectacles ahurissants comme le cas vécu en 2004 dans la zone de l'Organisation Commune Bénin-Niger (OCBN) à Parakou. Les populations installées dans ce domaine à la suite du lotissement des quartiers périphériques de la gare ferroviaire ont été délogées de force avec destruction systématique de leurs habitats de fortune, ce qui pose le problème aussi bien de l'expropriation et du dédommagement très récurrent au Bénin que de la citoyenneté, avec le phénomène des « sans-abris ».

En effet, lorsque l'administration a besoin d'un terrain (pour ouvrir une voie nouvelle par exemple), elle considère que son appropriation actuelle n'étant reconnue par aucun titre foncier, le terrain n'a pas de véritable propriétaire. Dans le langage administratif, le propriétaire n'est plus, alors, qu'un « présumé propriétaire », voire un « présumé propriétaire prétendu ». Ce dernier est repéré au cours d'un « état des lieux » préalable, mais les terrains pris ne sont pas indemnisés. On prévoit seulement de donner des terrains de compensation dégagés dans le cadre d'opérations voisines de lotissement de remembrement, grâce à l'application de coefficients de réduction un peu plus élevés. En pratique, il ne s'agit même souvent que d'une promesse de terrain dans un futur lotissement voisin.

Les expropriés sont alors désignés comme les « sinistrés » de telle ou telle opération, un peu comme si l'expropriation était un cataclysme naturel. On ne les indemnise pas mais on prend leurs noms, et ils n'ont plus qu'à attendre – parfois de nombreuses années – que l'administration veuille bien leur attribuer des terrains de remplacement, au détriment de l'ensemble des propriétaires initiaux d'une autre opération qui verront leurs droits réduits d'autant. Il arrive aussi que leurs créances soient ensuite contestées, dans la mesure où leurs droits fonciers n'avaient pas été correctement pris en compte dans « l'état des lieux » initial ou lorsque les documents correspondants ont été « égarés ».

Par ailleurs, les problèmes sociaux engendrés par la mauvaise politique d'urbanisation se posent aussi en termes d'équité et de citoyenneté. Ils occasionnent des victimes de l'urbanisation. En effet, les habitants des anciens villages devenus quartiers de villes sont confinés dans des espaces exigus au cœur de la ville. Ces derniers, qui n'ont plus les moyens financiers nécessaires pour s'acheter d'autres parcelles en milieu urbain, se voient pris en otage par la ville puisqu'ils avaient offert gratuitement leur domaine aux immigrés dans le but de voir leur village s'agrandir. C'est le cas des Batombu, autochtones du milieu, dans les quartiers de Guéma, Dokparou et Amawougnon au nord de la ville de Parakou et des populations Nagot des villes de Dassa-Zoumé, Glazoué et Tchaourou (quartier Okélagba) rattrapées par les opérations de lotissement. D'autres, en revanche, sont obligés de vendre leurs parcelles par manque de ressources financières pour bâtir un habitat moderne et choisissent d'aller s'installer à la périphérie afin d'éviter la honte et de s'approcher de leurs champs repoussés par l'expansion urbaine. Au nom de quelle citoyenneté sont-ils condamnés à vivre dans l'austérité du milieu rural ?

De tout ce qui précède, la question qui mérite d'être posée est de savoir ce qui est fait pour résoudre, tant soit peu, les problèmes qui viennent d'être évoqués.

Les dispositions techniques mises en place pour la gestion urbaine et leurs limites

Des outils de gestion ont été élaborés pour faire face à certains problèmes d'insécurité foncière en milieu urbain que le régime d'immatriculation n'a pas pu régler. Mais en dépit des succès connus, ils connaissent des limites. Les deux principaux outils qu'il convient d'évoquer ici sont l'Immatriculation collective et le Registre Foncier Urbain (RFU).

L'Immatriculation collective

Les lacunes des dispositions relatives à l'immatriculation ont entraîné la prise du décret n°2001-291 du 28 août 2001 créant une Commission nationale de transformation des permis d'habiter en titres fonciers. Ce projet de transformation des permis d'habiter en titres fonciers connu sous l'appellation de « l'immatriculation

collective» vise à trouver des solutions à l'épineux problème d'insécurité foncière en milieu urbain. Cette opération pilote a commencé dans les trois grandes villes de Cotonou, Porto-Novo et Parakou en 2003, sous l'initiative du gouvernement à travers le ministère de l'Environnement, de l'Habitat et de l'Urbanisme. Cette tâche, qui a permis d'attribuer 1 483 titres fonciers, a été conçue en prélude à la réforme du foncier urbain à travers le Projet d'Appui à la Réforme du Foncier Urbain (PARFU), inscrit au programme du gouvernement pour la période 2001-2006 et au programme d'investissement public sur 10 ans.

L'opération de transformation des permis d'habiter en titres fonciers, qui n'est ni plus ni moins qu'une immatriculation collective en milieu urbain, en est à sa phase de généralisation et prend en compte, pour la première année, 30 communes sur 77 que compte le pays. L'ambition est d'immatriculer en cinq ans, de 2004 à 2008 pour les 77 communes, 65 650 parcelles, dont 6 500 pour la ville de Parakou, 250 pour la ville Tchaourou, 250 pour la ville Dassa-Zoumè et 675 pour la ville de Glazoué.

A voir les dispositions récentes du traité de l'organisation pour l'harmonisation des droits d'affaires (OHADA, dont le Bénin est signataire) qui recommande que les banques n'acceptent plus le permis d'habiter comme garantie de remboursement des prêts qu'elles octroient à leurs clients, cette opération apparaît comme vitale pour l'économie nationale. De ce point de vue, il serait intéressant qu'à terme, cette opération envisage, intégrer à sa stratégie l'espace rural qui a besoin, autant que l'espace urbain, de sécurité foncière. En dépit de l'efficacité de cet outil, des interrogations subsistent quant à la rapidité dans la conduite de l'opération pour résoudre totalement les problèmes de propriété foncière en ville.

Le Registre Foncier Urbain (RFU)

Dans le cadre de l'assistance aux collectivités locales en matière de gestion urbaine, la SERHAU-SA a mis au point, depuis 1989, un outil dénommé « Registre Foncier Urbain » (RFU), dont l'objectif général est d'améliorer les ressources fiscales locales pour le financement des actions de développement urbain grâce à un recensement de terrains et des constructions, ainsi que de leurs propriétaires ou occupants. Il est assimilé à un « cadastre simplifié ». C'est un outil de gestion municipale mis en place pour faire face aux exigences de la gestion urbaine de plus en plus croissante en augmentant le rendement des impôts locaux. Le travail n'est réalisé que pour les parties « régularisées » du tissu urbain des principales villes. Il inclut une indication de l'importance du bâti et une estimation de sa base d'imposition. Ce système a été mis en place dans les grandes villes, dont Parakou, et sa version simplifiée dans les villes secondaires comme Dassa-Zoumè.

Il faut noter que cet outil ne propose aucune solution au problème crucial de l'insécurité foncière en milieu urbain. A la différence du cadastre, qui est presque inexistant au Bénin, il ne prend pas en compte l'entièreté du territoire

de la commune et ne s'intéresse qu'à sa partie urbaine et, bien souvent, même uniquement à des zones ayant un plan de lotissement.

Conclusion partielle

La législation foncière au Bénin pose énormément de problèmes en raison de son laxisme. Elle sème des confusions du fait de la coexistence des droits coutumiers et des droits positifs. Dans le domaine urbain, c'est l'absence quasi-totale de règles d'urbanisme qu'il faut souligner. Cette situation est à l'origine de nombreux et épineux problèmes tels que l'occupation illégale et anarchique des domaines publics et impropres à l'habitation, les litiges domaniaux qui opposent les prétendus héritiers d'un patrimoine foncier, les fréquentes remises en cause des droits des acquéreurs de parcelles par les héritiers de leurs vendeurs, la spéculation foncière galopante et le phénomène du lotissement tardif, avec toutes ses conséquences sociales.

En dépit des quelques dispositions techniques prises pour gérer la question du foncier en ville, celle-ci est loin d'être jugulée. De ce point de vue, on constate que les problèmes fonciers urbains mal ou non résolus sont transposés à la périphérie qui est déjà un espace où les droits coutumiers dominent en règle générale. Ce qui complique davantage la question foncière, déjà épineuse en ville et, dans une moindre mesure en milieu rural, au tour des villes du Bénin en général. Qu'en est-il alors des villes de Parakou, de Tchaourou, de Glazoué et de Dassa-Zoumè au centre Bénin ? C'est à cette question principale que la partie suivante sera consacrée.

La question foncière en milieu périurbain au centre du Bénin

La question foncière est devenue une préoccupation majeure aussi bien des ruraux à la périphérie des villes que des citadins. C'est une sorte de compétition croissante pour l'accès à la terre. En effet, l'espace agricole périurbain se rétrécit progressivement sous les effets conjugués de la croissance démographique, des besoins contradictoires d'espace de construction des habitations pour les citadins et d'espace de culture pour les ruraux. En matière juridique, la ville et la campagne semblent s'opposer. D'un côté, on constate la prégnance des droits positifs en ville et, de l'autre côté, la prédominance des droits coutumiers sur le milieu rural. La diffusion des valeurs modernes va généralement de la ville vers la campagne, où les valeurs anciennes trouvent leur terrain de prédilection. Mais en milieu périphérique, cette ambivalence du statut juridique n'est pas aussi tranchée. La périphérie est, par nature, un lieu de rencontre par excellence des deux régimes fonciers. Le jeu foncier local à l'interface de la ville et de la campagne est donc tributaire du dualisme juridique. Cette coexistence des deux régimes s'explique par le changement du statut du sol jadis soumis aux activités agraires, mais qui

doit bientôt devenir un espace constructible. C'est à la faveur de l'urbanisation que le régime foncier moderne s'impose et fait disparaître, par conséquent, celui traditionnel à travers le lotissement souvent précédé par la « monétarisation » de la terre. Cette opération de transaction foncière autour des centres urbains crée une dynamique particulière qui revêt un intérêt pour cette étude. Qui en sont les acteurs ? Qu'est-ce qui caractérise le jeu foncier local dans ce milieu ? Quels sont les déterminants de ce jeu ? Quelles en sont les conséquences directes en termes de mutations sur le paysage aussi bien urbain que rural ?

L'espace périurbain aux fonctions et contours flous

Pour mieux appréhender les caractéristiques de l'espace périurbain et ses fonctions dans le cadre de cette étude, il serait intéressant d'analyser brièvement le visage de l'armature urbaine à l'échelle nationale.

On note au Bénin, comme dans bon nombre de pays colonisés d'Afrique, une faiblesse de l'urbanisation qui est la conséquence du mode de gestion caractérisé par l'absence d'un schéma directeur d'aménagement du territoire national. Cette faiblesse se traduit par l'inexistence d'une armature urbaine bien hiérarchisée à l'échelle nationale. Les seuls centres qui ont pu évoluer en villes sont, d'un côté, ceux ayant servi de base aux premiers comptoirs européens et qui sont par la suite transformés en port d'évacuation des matières premières, de l'autre, les anciens pôles d'encadrement administratif, à l'échelon national et régional. Mais le manque de moyens n'a pas permis de bien gérer les différents centres d'encadrement administratif au niveau régional pour qu'ils deviennent de véritables villes. D'après Igwe (1999), le Bénin fait partie des pays où seuls les centres qui ont été choisis comme chefs-lieux du territoire national ont pu devenir de véritables villes. De ce fait, l'armature urbaine qui se dessine est squelettique, avec la présence de deux villes principales au maximum : la ville-port (cas de Cotonou) et la ville-capitale (cas de Porto-Novo). Mais le souci des dirigeants après l'indépendance de faire de Cotonou la ville phare a favorisé son développement au détriment de Porto-Novo qui est la capitale administrative.⁴ La conséquence logique de cette mauvaise gestion est l'absence d'un véritable réseau urbain capable de structurer tout le territoire national. On comprend alors pourquoi de petits établissements humains qui jouent le rôle d'encadrement administratif sont qualifiés de centres urbains. C'est ce sens qu'il a été signalé dans l'avant-propos que la notion de ville doit être relativisée pour être comprise dans le contexte béninois.

Tout comme la notion de ville, celle de la périphérie a besoin d'être explicitée. En fait, la notion de périphérie ne peut se comprendre que par rapport à celle du centre. Ces deux notions renvoient donc à la position qu'occupent deux éléments sur l'espace. L'un (le centre) est géographiquement situé à un lieu qui détermine la position de l'autre (la périphérie). Dans le contexte de cette étude, le déterminant est le centre-ville qui dicte sa loi à son environnement

immédiat. Dans les pays ayant une armature urbaine dynamique avec des villes dignes du nom, on distingue plus ou moins des couronnes concentriques. De ce fait, le centre urbain est nettement distingué de la périphérie par le relâchement progressif de l'habitat.

Dans le cadre de cette étude, il est plutôt difficile de faire cette nette démarcation en raison de l'absence d'une bonne politique de gestion de l'espace urbain. Cependant, il faut faire remarquer que la périphérie est ici considérée comme l'espace au tour des villes où les activités agraires sont nettement visibles et dominant les habitations. Elle se caractérise surtout par l'organisation générale du terroir villageois à travers l'habitat, le finage, les modes et techniques de gestion de l'espace cultural. Elle est comparable aux abords immédiats des villages où s'étend la première couronne des champs, à la seule différence qu'elle est marquée par la présence des plaques d'immatriculation des acquéreurs, véritables indicateurs de spéculation et de l'appropriation foncière. Au-delà, à au moins une demi-douzaine de kilomètres, sont implantées des fermes de cultures. Les limites entre la ville et sa périphérie sont, de ce fait, généralement imprécises. La périphérie est alors constituée des espaces agricoles qui jadis sont des terroirs des villages à habitats groupés où se pratiquent aussi bien l'agriculture, le pâturage et la collecte de bois de chauffe. C'est cet espace qui est aujourd'hui pris d'assaut par les citadins pour des fins d'habitations, rendant ainsi flous ses contours et ses fonctions. Qui en sont alors les vrais acteurs d'un tel phénomène ?

Les acteurs de la transaction foncière à la périphérie des centres urbains

Plusieurs acteurs interviennent dans la transaction foncière autour des villes. Au nombre de ceux-ci on peut retenir les acquéreurs, les vendeurs, les courtiers, les témoins, les gardiens et les géomètres.

Les acquéreurs de parcelles

Jadis, seuls les fonctionnaires d'Etat et les commerçants s'adonnaient à la transaction foncière. Mais de nos jours, force est de constater que toutes les catégories socioprofessionnelles sont touchées. Il s'agit des employés des bureaux et des services publics et privés, des artisans et des ouvriers. A la périphérie de Parakou par exemple, les plus anciens acquéreurs de parcelles sont des fonctionnaires d'Etat et des politiciens⁵ en service à Cotonou, à Parakou et à N'Dali. Pour cette première catégorie d'acquéreurs des années 1960, 1970, et 1980, les cessions furent gratuites par un simple don du chef de terre ou des chefs de collectivités familiales. C'est le cas du vaste domaine cédé à El-Hadj Maman Foudouga, revendu à plusieurs personnes, et qui est devenu finalement une ferme au nom de Lawal, en face de l'Hôpital de Boko, à 15 km environ du centre-ville. Aujourd'hui, c'est par achat que les nouveaux acquéreurs obtiennent des

parcelles qui sont rarement immatriculées. Ces ventes obéissent essentiellement à des besoins d'argent de la part des présumés propriétaires. Toutefois, le souci d'éviter l'expropriation par l'Etat (administration) des terrains mis en jachère et la pression de l'expansion urbaine très galopante les poussent également à les mettre en vente. C'est une pratique courante dans le village de Tourou, une localité située à 15 km à l'ouest de Parakou.

Dans le rang des acquéreurs, on compte des fonctionnaires d'Etat, des commerçants, des chefs de service ou d'entreprises privées. Les natifs résidents et ressortissants sont aussi devenus les principaux acquéreurs. A Dassa-Zoumè et à Glazoué par exemple, on note un reflux des cadres vers leurs localités d'origine pour construire. Cela dénote leur volonté de hisser leurs communes au rang des plus urbanisées du pays. Le souci est de voir sa localité abriter le chef-lieu du département des Collines.

Les vendeurs de parcelles

Le rôle joué par les chefs de collectivité dans l'acquisition des parcelles par les premiers acquéreurs ne permet pas de les qualifier de vendeurs. Ce qui se fait présentement par les chefs de famille et les jeunes des villages périphériques des centres urbains s'y prête bien. En effet, certains des natifs des villages mettent frauduleusement en vente les réserves foncières héritées de leurs parents par l'aide des courtiers. Cette pratique antinomique aux principes du régime coutumier pose le problème de gestion des propriétés individuelles et collectives qui ne devraient pas être aliénées. Les vendeurs sont généralement les propriétaires terriens héritiers ou anciens acquéreurs. Les ventes sont motivées par les besoins d'argent à des fins diverses. A Dassa-Zoumè par exemple, certains opérateurs fonciers achètent les terres, les morcellent puis les revendent. Ils rachètent ces terres auprès des présumés propriétaires des nues propriétés quand ces derniers traversent une période conjoncturelle ou qu'ils éprouvent un besoin pressant d'argent qui les oblige à céder leur propriété à vil prix. Outre les natifs, ce sont des étrangers qui vendent de façon discrète des parcelles qu'ils ont acquises gratuitement. C'est surtout lorsqu'ils sont en instance de départ pour leur village d'origine qu'ils se lancent dans cette opération (quartier Thian à Parakou).

Les courtiers ou démarcheurs

Ce sont des gens qui font l'interface entre les acquéreurs et les vendeurs. Ils ont pour rôle de mettre en contact le vendeur et l'acheteur. Ils sont connus généralement sous le nom de démarcheurs. Ces acteurs se constituent parfois en réseaux ou associations au sein d'une ville et s'appuient sur les présumés propriétaires terriens, citadins ou ruraux. C'est le cas par exemple de l'association de démarcheurs à Parakou basée au quartier Ganou. L'existence de ces réseaux se

justifie par la nécessité d'harmoniser les points de vue par rapport à leurs intérêts communs : la fixation des prix des parcelles en fonction des superficies et des lieux, les redevances de transactions, de leur couverture par les autorités locales. Les courtiers suscitent parfois la mise en vente des parcelles auprès des présumés propriétaires et les chefs traditionnels. Ils jouent également le rôle d'interface entre le pouvoir politique local et les acquéreurs et les vendeurs en même temps. Leurs rapports avec le pouvoir politique local sont fondés sur la délivrance des pièces devant garantir les droits de propriété foncière. Il arrive qu'un démarcheur se transforme en acquéreur et vendeur dans le souci d'accroître son revenu.

Les témoins

Ce sont des personnes physiques qui s'engagent pour garantir la légalité des ventes/achats des parcelles. Les principaux témoins fréquemment cités dans cette activité sont les chefs de village, les délégués. Ils sont les seules autorités locales habilitées à authentifier les conventions de vente par leur signature avant leurs chefs hiérarchiques que sont les élus locaux. En dehors des chefs de village, il y a les démarcheurs et les parents ou amis du vendeur et de l'acquéreur qui sont utilisés comme témoins.

Les notaires

Au Bénin, il existe très peu de notaires. Ces derniers sont organisés sur un modèle qui a été calqué sur celui de la France. Toutes leurs études sont localisées à Cotonou, sauf une qui a son siège à Porto Novo et une autre récemment installée à Parakou. Le rôle des notaires n'est pas encore bien connu des autres acteurs du foncier. Depuis que l'accord sur l'Organisation africaine des affaires (OHADA) a multiplié les cas où l'intervention d'un notaire est obligatoire dans la vie économique, la rédaction des actes de mutation n'occupe à ce jour qu'une faible part du volume d'activité des notaires. Avec le projet de transformation des permis d'habiter en titres fonciers, on espère que la fonction des notaires pourrait retrouver ses lettres de noblesses au Bénin, le but de leur intervention étant d'assurer la rédaction correcte des actes et de vérifier l'identité des contractants. En l'absence d'un titre foncier et d'un système central d'enregistrement efficace, ils ne disposent d'aucun moyen pratique de vérifier qu'un terrain n'a pas déjà fait l'objet d'une autre vente.

Les gardiens

Ce sont des personnes à qui les parcelles achetées sont confiées pour assurer leur sécurité ou leur entretien. C'est souvent un parent ou un ami de l'acquéreur qui réside en ville si ce dernier est éloigné de la localité. Parfois, le vendeur peut servir de gardien à l'acquéreur afin de continuer à exploiter la parcelle en attendant sa mise

en valeur par son nouveau propriétaire. Aussi note-t-on l'existence des gardiens-agriculteurs qui se contentent seulement de surveiller les propriétés des acquéreurs sans pouvoir les valoriser, laissant ainsi de vastes domaines agricoles « gelés ».

Les géomètres

Ils sont sollicités pour faire le lever topographique afin de borner le terrain pour pouvoir établir les papiers officiels comme le permis d'habiter et le titre foncier. La corporation des géomètres est fortement truffée d'amateurs qui ne dépendent d'aucun cabinet agréé par l'Ordre des Experts Géomètres, ce qui fait constater de fréquentes contestations qui alimentent les conflits fonciers. Le rôle para-juridique qu'ils peuvent être amenés à jouer dans le processus de reconnaissance de la possession, lors de la confection des plans d'état des lieux pose cependant certains problèmes de principe, et la procédure doit certainement en être rendue plus rigoureuse, car leurs travaux sont parfois contestés.

L'administration locale

Elle est représentée par le service des Affaires Domaniales des mairies. La loi n°27-029 du 15 janvier 1999 portant organisation des communes en République du Bénin confère à la commune les compétences en matière de gestion foncière. De ce point de vue, elle se charge d'informer les lotisseurs potentiels sur les règles et procédures d'urbanisme applicables, de participer à l'organisation et à la réalisation de toutes les étapes du lotissement. Elle supervise tous les travaux du lotissement, notamment l'ouverture des enquêtes commodo et incommodo, le recueil et l'analyse des observations du public, l'établissement et la transmission au ministre chargé de l'Urbanisme du procès-verbal de clôture de l'enquête. Elle est appuyée par la préfecture et les services déconcentrés de l'Etat :

- la préfecture contrôle la légalité des actes des collectivités locales ;
- la Direction Départementale de l'Urbanisme joue le rôle d'assistance-conseil sur la faisabilité des opérations du lotissement. Elle suit et contrôle le respect des règles et normes d'urbanisme dans l'application du projet de lotissement ;
- le Service Départemental de l'IGN élabore le fond du plan. Il établit des documents d'état des lieux et l'assistance-conseil sur la faisabilité des travaux topographiques. Il est appuyé par la Direction générale de l'Institut Géographique National.

Les présumés propriétaires

Leur rôle est de matérialiser les parcelles par la pose d'une plaque d'identification et de formuler des observations ou des doléances sur les documents d'état des lieux lors de l'enquête publique.

Les lotisseurs

Ils regroupent les propriétaires fonciers individuels, l'association foncière, le maire, le ministre chargé de l'Urbanisme et le ministre des Finances. Ils agissent tous dans le lotissement de l'immatriculation du périmètre concerné à la délivrance de l'attestation de recasement et du permis d'habiter en passant par les étapes d'état des lieux, des études et de l'application.

- **Le ministre délégué auprès de la présidence de la République, chargé de l'Urbanisme**

Il nomme le Commissaire-enquêteur, prend en considération le projet de lotissement et autorise la poursuite du projet.

- **Les cabinets de géomètre-expert**

Ils établissent des documents d'état des lieux et du plan parcellaire et du dossier de recasement, participant à l'organisation de l'enquête publique de commodo et incommodo. Ils exécutent les travaux topographiques et d'identification de parcelles et participent aux travaux de la commission de recasement.

- **Le cabinet d'urbaniste ou d'architecte**

Il établit le projet de lotissement, présente le projet au cours des séances de validation des commissions départementales et nationales d'urbanisme, participe aussi à l'organisation de l'enquête publique de commodo et incommodo, et aux travaux de la commission de recasement.

- **Le comité de lotissement**

Il représente l'administration moderne auprès des populations qu'il éduque en la matière et à régler, autant que possible, les éventuels problèmes des propriétés.

Parmi tous ces acteurs, il importe de préciser que les élus de l'administration locale sont nouveaux dans ce jeu de rôle des acteurs. On peut alors dire que les réformes engagées par l'Etat ont affecté l'ancien dispositif, créant ainsi une autre dynamique des acteurs du foncier. Après avoir passé en revue ces différents acteurs, il importe alors d'analyser le processus de la « monétarisation ».

La « monétarisation » des terres à la périphérie des centres urbains, un processus en prélude au lotissement

Dans un passé encore récent, les terres étaient cédées aux demandeurs gratuitement ou presque par les présumés propriétaires selon le degré de générosité de l'acquéreur, dans le respect des règles traditionnelles. Cet acte de générosité dépendait aussi de la qualité des relations entre le dépositaire de droits de cession et le candidat acquéreur ou attributaire. Les transferts extra-communautaires s'effectuent entre communautés autochtones et allogènes. Jusqu'à la fin des années 1980, dans le Bénin central par exemple, les communautés nagot cédaient des portions de terre aux peuples lokpa et bètamaribè venus du nord-ouest et

Adja, en provenance du sud-ouest. Le donataire offrait, entre autres produits 1 litre de (bière locale) sodabi⁶, du sel, des feuilles de tôle, un cabri ou mouton, etc. Les sessions se concluaient sur la base de simples accords non écrits en présence des représentants des familles des contractants, des chefs des collectivités et des représentants du pouvoir traditionnel. La durée d'exploitation des domaines cédés était indéterminée. Les dimensions étaient indéfinies ou étaient fonction du besoin du donataire.

Progressivement, le don a disparu des habitudes au profit :

- du prêt usufruitier qui limite le droit d'usage du bénéficiaire au décès ;
- du prêt à durée indéterminée qui prive le tenancier de toute plantation et ;
- de l'achat ou de l'impossibilité pour les enfants du bénéficiaire d'hériter les terres après son décès.

Mais à partir des années 1990, sous l'effet conjugué de la pression démographique, de l'expansion urbaine et de l'essor des filières coton et anacarde, la terre a commencé à prendre une valeur marchande. A cela il faut ajouter la pratique des opérateurs économiques et des fonctionnaires qui consiste à acquérir de vastes domaines dans les périphéries des villes pour développer l'agro-foresterie. Désormais donc, les paysans sont contraints de vendre leurs terres plutôt que de les céder gratuitement sous peine d'expropriation. Ce phénomène de « monétarisation » des terres à la périphérie des centres urbains comporte plusieurs étapes, à savoir la déclaration d'intention, les contacts, la visite du terrain, la fixation du prix, le choix des témoins, la signature des conventions, le bornage et la mise en valeur de la parcelle.

De la déclaration d'intention aux premiers contacts : il s'agit de la manifestation du désir d'achat ou de vente d'une parcelle. Il s'accompagne de la recherche d'un démarcheur ou d'un preneur par la personne qui désire en vendre et d'un démarcheur ou d'un vendeur ou présumé vendeur par la personne qui désire en acheter. Les premiers contacts commencent une fois que l'un des acteurs, y compris le démarcheur, s'engage. Ce contact permet de prendre le rendez-vous pour la suite des opérations.

De la visite du terrain à la fixation du prix d'achat de la parcelle : il consiste à faire le déplacement pour identifier le terrain afin de débattre du prix. Généralement, les prix varient en fonction de l'éloignement de la parcelle du village et de ce qu'elle comporte comme bien marchand. Cette étape permet aussi de vérifier si la parcelle appartient ou non au vendeur. C'est la première mesure de sécurité pour l'acquéreur. Les autorités du village sont impliquées à cette étape suivant les cas.

Du paiement à la signature des conventions de vente : le paiement est l'acte qui consacre l'achat de la parcelle. Il peut se faire au comptant ou par tranches, par tempérament. Une fois que l'acquéreur est prêt à verser l'argent, il mobilise ses témoins après avoir averti le vendeur pour que ce dernier en fasse autant. Cela aboutit à la signature des conventions par les témoins préalablement

mobilisés par l'acheteur, en présence du délégué ou non. Toujours est-il que ce dernier doit nécessairement signer la convention avant ses chefs hiérarchiques de l'administration communale. Ces conventions portent des renseignements suivants : dimension, prix, noms du vendeur, de l'acquéreur et des témoins, date de signature, nom de la localité et de la commune. De façon générale, ces papiers sont gardés par devers les nouveaux propriétaires. Très peu de témoins, y compris le délégué, savent le contenu de ces conventions de vente. Une fois que l'acquéreur verse le prix d'achat, il paie une prime communément appelée « commission » au démarcheur et parfois une modique somme au délégué du village. Ladite commission représente les 10 pour cent de la valeur de vente de la parcelle. Il peut arriver qu'on enregistre des dissimulations de la part du démarcheur. Il prélève parfois sa commission aussi bien chez l'acheteur que chez le vendeur. Il fait aussi de la surenchère auprès de l'acquéreur et prélève la différence. Pour finir, l'acquéreur averti se rend à la mairie pour les formalités administratives. Le délégué semble jouer le rôle du notaire apparent. L'Etat n'est pas concerné par ce type de vente informelle. Les taxes ne sont payées qu'à la mairie et varient d'une commune à une autre. Le montant le plus élevé de la signature de la convention de vente est enregistré à Parakou et s'élève à dix mille francs CFA.

Du bornage à la mise en valeur de la parcelle : la sécurisation des parcelles : cette étape finale concerne surtout l'acquéreur, le géomètre et le démarcheur et parfois le vendeur. Il consiste à vérifier si la parcelle n'a pas été occupée entre-temps et à faire le levé topographique et le bornage. Si aucune contestation n'est observée, le géomètre opère. Il arrive que cette opération tarde à se réaliser, cela dépend de l'acquéreur. Cette disposition sécuritaire de bornage et de mise en valeur est plus pratiquée à Parakou que dans les trois autres villes. En effet, outre les conventions, les mesures de sécurisation passent également par le bornage ou l'érection d'une clôture ou l'implantation d'une plaque nominale précisant les coordonnées du propriétaire avec les références du titre foncier ou de permis d'habiter. La mise en valeur constitue un autre mode de sécurisation utilisé. Elle révèle généralement les raisons qui ont motivé l'acquisition de la parcelle. Ainsi, la plupart des parcelles achetées sont destinées à des fins agricoles : création de ferme pour l'agriculture dominée par les plantations (teck, anacardier, manguier) et l'élevage. Aussi remarque-t-on souvent que les parcelles achetées sont placées sous le contrôle d'une personne de confiance pour veiller à leur sécurité si la mise en valeur par l'acquéreur devait tarder. Toutes ces précautions visent comme objectif l'éviction des pratiques de double vente qui dégénèrent en conflits parfois meurtriers.

Les causes de la vente des terres

Au-delà de la conception traditionnelle qui dit que les terres appartiennent aux chefs traditionnels, celles-ci ont des propriétaires privés qui se trouvent être les premiers occupants. Le pouvoir traditionnel leur reconnaît ce droit et ils sont

considérés comme les présumés propriétaires terriens. Ils bénéficient de tous les droits d'usage sur les propriétaires fonciers.

Autrefois, ils pouvaient les donner ou les prêter. Mais aujourd'hui, les pressions faites sur les terres les amènent à les vendre, d'où la valeur marchande et spéculative qui explique l'évolution sans cesse croissante des prix des terres à la périphérie des centres urbains. Les raisons de la cession des terres sont spécifiquement liées à la faible productivité des terres agricoles dans les villages de l'étude. Cette situation ne permet pas aux paysans de faire face à leurs besoins de subsistance et d'investissement. Il n'existe cependant pas beaucoup de sources de revenus extra-agricoles qui leur soient facilement accessibles. Il n'existe pas non plus de sources de crédits attractifs où ils peuvent faire de prêts pour résoudre leurs problèmes financiers urgents. Ainsi la terre, bien qu'étant le principal élément de production pour la survie, devient un bien marchand à défaut d'autres alternatives accessibles.

La proximité de la ville joue un rôle important dans le développement des marchés de droits fonciers. En général, les villages les plus proches du centre urbain sont ceux où le marché des biens et des services se développe plus. Le contact rapproché avec la ville fait changer de comportements aux paysans qui, de plus en plus, exigent une contrepartie financière pour les cessions de parcelle. De même, les habitants des villes, recherchant des secteurs de placement de leurs fonds, vont dans les villages avoisinants proposer aux paysans de leur acheter des domaines à des prix intéressants.

L'évolution des prix dans la transaction foncière

La variation des prix par localité

Les prix des parcelles varient d'une localité à une autre et en fonction du temps. Cette variation des prix des terres de Parakou, telle que signalée par les populations, révèle qu'avant les indépendances, les terres coûtaient moins de 1000 F CFA l'hectare (Abdoulaye Garba⁷ cité par Aboudou 2003). Au début des années 1960, 2000 F CFA, dans les années 1980, une parcelle de 2 400m² coûtait 20 000 F CFA ; en 1990, son prix a été porté à 40 000 F CFA, payable en plusieurs tranches. Trois ans plus tard, en 1993, une parcelle de 900m² (30m*30m) était vendue à 60 000F CFA et à 90 000F CFA en 1995. De 1997 à aujourd'hui, le prix d'une parcelle de 25m*30m a été officiellement porté à 300 000F CFA. De l'avis de la plupart des membres de l'administration, ce dernier taux sera porté à 600 000F CFA en 2003, sans compter les frais de lotissement qui sont actuellement de 90 000F CFA par parcelle depuis 1990. Il est important de signaler que sur le terrain, les dimensions des parcelles n'ont toujours pas respecté l'évolution de leurs prix. Ces dimensions ont toujours évolué à la baisse de 40*40m² à 20*25m² et parfois 18*25m² (Aboudou, Nica 2003).

Les parcelles dont il est question ici sont celles mises en vente par l'administration locale. Elles sont situées de ce fait dans les zones de lotissement et plus précisément dans les périphéries immédiates du front urbain. A Parakou, elles sont situées autour de 10 km du noyau central.

Dans l'informel par contre, les prix ont toujours été plus élevés surtout dans l'agglomération urbaine pour les mêmes superficies. Certaines déclarations ont parlé des spéculations actuelles de l'ordre de 800 000 à 2 000 000 F CFA pour des parcelles de 25m sur 30m. Ces prix sont aussi fonction de l'emplacement des parcelles. Au cœur de la ville, des parcelles sont cédées à plus d'une dizaine de millions.

C'est en milieu rural que les terres ne coûtent pas cher, selon les informations recueillies sur le terrain. Là, elles sont généralement vendues par hectare et les prix ont évolué de 50 000 F en 1980 à 80 000 F en 1990 CFA, puis à 150 000 CFA en 1994 et à 500 000F CFA aujourd'hui. Ces prix sont aussi fonction de l'éloignement des terres de la ville ou des grands axes routiers (15 à 20 km environ). Ils sont aussi déterminés par la nature des terrains, leur statut juridique, urbanistique ou écologique. Le marché foncier révèle aussi le caractère peu fongible des biens à échanger.

Dans les villes de Dassa-Zoumè, de Tchaourou et de Glazoué, pour une dimension de (30m x 20m), le prix des terres a évolué à la hausse. Ainsi, de 1973 au lendemain de la démocratie en 1990, le prix est passé de 20 000 F CFA à 150 000 F CFA. De 1990 à la décentralisation en 2003, le prix a évolué de 150 000 f à 400 000 f. Notons que le prix appliqué par l'administration à Dassa-Zoumè est plus élevé que ceux de Glazoué et de Tchaourou.

Donc, les prix ne suivent aucune norme officiellement établie mais dépendent beaucoup plus de certains déterminants. Dans les trois dernières villes, ces parcelles sont distantes du noyau central d'environ 5 km.

Les facteurs déterminants de l'évolution des prix

Les prix généralement pratiqués par les propriétaires terriens pour les mêmes dimensions sont plus élevés et dépendent de la position ou de la situation géographique de la parcelle, de la forte demande, du besoin monétaire du vendeur, de la proximité des infrastructures économiques et administratives. Ces éléments sont les principaux facteurs qui expliquent cette évolution du prix dans les quatre villes.

A Parakou, c'est la succession de plusieurs événements qui ont été à la base de la flambée des prix des parcelles. Il s'agit de l'avènement des premiers lotissements des années 1960, du rapatriement des Béninois du Ghana (1972) du Gabon (1978) et de la mise en place de certaines infrastructures industrielles (IBETEX, SOBEBRA, SONAPRA) à partir des années 1980 que la terre va commencer par

être vendue pour l'installation des populations étrangères. La non disponibilité des outils de quantification de la progression spatiale (photographies aériennes, plans cadastraux, etc.) ne permet pas de montrer les évolutions spatiales et temporelles des villes étudiées.

A toutes ces raisons s'ajoute la pression démographique qui encourage les spéculations foncières. Il n'a jamais existé de prix standard. A côté des prix officiels appliqués par l'administration publique des collectivités locales, existent toujours ceux de l'informel qui sont souvent plus élevés que les premiers, surtout pour les parcelles situées non loin des grands axes routiers ou au cœur de la ville.

L'espace périurbain est l'interface de la ville et de la campagne. Mais ses limites ne sont toujours pas précises. Précédemment soumis aux activités agraires, il est dans la sphère de la ville et est, de ce fait, prédestiné à la construction des habitations modernes dont les acteurs sont multiples et ont des enjeux variés et parfois contradictoires. Cet espace est donc soumis à plusieurs dynamiques déterminées par la législation foncière et les pratiques des populations qui se manifestent à travers le phénomène de l'expansion urbaine.

Le processus d'expansion urbaine et la dynamique foncière

Le processus de l'expansion urbaine dans la dynamique foncière est un phénomène qui permet de comprendre la pression foncière à la périphérie des villes. Pour l'aborder, il serait intéressant d'analyser d'abord les formes et les modalités de l'expansion urbaine. Ensuite, les facteurs qui entrent dans la dynamique foncière seront mis en relief. Enfin, les conflits engendrés par ce processus méritent d'être abordés pour mieux comprendre les enjeux de ses acteurs.

Les formes et les modalités de l'expansion urbaine

Les formes

L'analyse de l'occupation spatiale ou de l'étalement de l'armature urbaine varie d'une ville à une autre. La plupart des villes du centre Bénin sont traversées à l'est par la voie ferrée, ce qui constitue un frein à leur extension dans ce secteur à cause de la non ouverture des passages à niveau. Par rapport aux autres zones, l'expression de la forme d'expansion varie d'une localité à une autre.

A Glazoué, l'expansion évolue suivant les quatre points cardinaux et confond déjà la ville à ces villages périphériques d'Orokoto (à l'ouest), de Kabolé (au sud-ouest), de Zaffé (au sud-est), etc.

A Dassa-Zoumè, l'expansion de la ville s'est faite surtout vers l'est, le sud-est et le nord-est, ce qui la rapproche davantage de Moumoudji. Cette forme d'expansion de la ville s'explique par le fait que les secteurs sus-indiqués sont considérés comme des zones non litigieuses, contrairement au secteur de l'ouest qui a été ordonné

indisponible par le tribunal départemental d'Abomey depuis 1985 à cause des multiples litiges qui opposaient les présumés propriétaires terriens. Pendant une quinzaine d'années, la ville a été plongée dans des problèmes d'aménagements et n'a connu aucun projet de lotissement. La zone située à l'ouest, qui a été ciblée pour accueillir les projets d'aménagement, attendait la décision de la justice.

A Tchaourou, la ville s'étend dans deux sens : dans un premier temps, c'est le long du grand axe routier Route Nationale Inter Etats n°2 (RNIE2). Le second axe d'extension de la ville est celui de Tchaourou - Bètèrou à l'ouest. Deux raisons expliquent le développement de la ville dans cet axe : la première est liée à l'implantation des bureaux de la mairie et du stade omnisports sur cet axe. La seconde raison concerne la praticabilité de la route Tchaourou – Bètèrou qui permet non seulement de relier la Tchaourou à Djougou (voire la Donga et l'Atacora) sans passer par Parakou, mais aussi favorise les trafics frauduleux entre le Nigeria, le Togo et le Bénin.

A Parakou en revanche, l'analyse de la carte d'occupation du sol montre que la ville de Parakou présente une forme géométrique irrégulière qui se caractérise par le développement linéaire suivant les grands axes routiers à partir du noyau central. L'expansion de la ville de Parakou présente une figure semblable à une étoile à quatre branches, avec une branche (secteur Est vers Baka) moins développée que les autres. La principale branche est celle que représente l'axe routier nord (route de Malanville). Les principaux fronts urbains sont constitués par les trois axes bitumés sud, nord et ouest. Ils déterminent également les zones de forte attractivité. Ces fronts sont liés à plusieurs facteurs d'ordre physique, social, financier et politique : le relief, la spéculation, l'évolution du lotissement.

Au plan physique, la nature du relief, dont les fortes pentes (3 pour cent ou plus) orientées ouest-est qui caractérisent la ville, facilite plus l'installation des populations plus à l'ouest qu'à l'est à cause des inondations des périodes de crues.

Au plan social, l'installation des populations à Parakou respecte un principe de clientélisme ethnique qui établit chaque immigrant qui vient s'y installer de le faire dans la direction de son lieu d'origine ou proche d'un de ses parents préalablement installés. Cette réalité est si évidente à Parakou qu'il est aisé de constater que les Baatombu du nord occupent les quartiers nord de la ville ; les ressortissants du Bénin méridional ainsi que du centre du pays sont installés dans les quartiers sud et les populations en provenance de l'ouest du pays (Atacora et Donga) occupent majoritairement les quartiers de l'ouest comme Albarika et Tibona.

Au plan économique, les spéculations foncières les plus expressives s'enregistrent le long des grandes routes. Chacun cherche à acquérir sa parcelle le long de la route pour y bâtir une infrastructure à caractère économique (boutique, ateliers, etc.).

Au plan politique, c'est autour des grands axes routiers que les populations s'installent le plus ; ce fait oblige les autorités à la tête de la ville à orienter plus leur politique de lotissement autour de ces derniers.

En général, le mode d'expansion de la ville de Parakou n'obéit pas à une logique formelle de planification urbaine. On note plus un développement spontané des quartiers basé surtout sur une occupation anarchique.

Les modalités d'expansion

Dans les villes du centre du Bénin en général, l'occupation des terres est spontanée et anticipative aux lotissements. L'expansion dans quatre villes se fait du centre vers la périphérie le long des axes routiers. Elle est marquée par la mise en place progressive d'infrastructures socio économiques publiques et privées. C'est dans la grande métropole, Parakou, que l'installation des populations est plus ou moins organisée en raison de l'existence des lotissements anticipatifs.

Le mode d'expansion de ces villes n'obéit donc pas à une logique formelle de planification urbaine. On note plus un développement spontané des quartiers qu'une organisation. Cet état de choses semble justifier le laxisme de l'Etat qui n'a pas su définir une politique d'aménagement du territoire en général et celle de l'urbanisation en particulier. L'expansion se fait à la fois de façon centripète (du centre vers la périphérie) et centrifuge (de la périphérie, c'est-à-dire des villages périphériques vers le centre ville).

Le processus d'expansion débute par le phénomène de la monétarisation de la terre à la périphérie de la ville. La monétarisation se caractérise par la spéculation foncière faite de demande et de l'offre entre ruraux et citadins. La monétarisation foncière à la périphérie de Parakou s'aggrave au fur et à mesure que les parcelles agricoles sont sollicitées pour devenir des parcelles d'habitation. Dès qu'une parcelle agricole cesse d'être une propriété des ruraux, suite à l'achat par un citadin, le processus d'urbanisation est engagé. Cette opération de monétarisation prédispose en fait l'espace qui subit ces types de transaction à l'urbanisation à court, moyen et long terme. Les nouveaux propriétaires fonciers qui viseront à s'y établir constituent par la suite des vecteurs d'urbanisation. Car en érigeant leurs habitations, ils cherchent à bénéficier des infrastructures à caractère social, sanitaire et économique qu'offre la ville (route, école, centre de santé, électricité, eau, etc.). Ils forment ainsi un groupe potentiel de pression, un lobbying pour rendre viable leur nouveau quartier. Le processus de lotissement s'amorce et évolue rapidement en fonction du dynamisme des habitants du quartier ou de la politique des autorités locales.

Les lotissements proprement dits sont prévus par les textes, mais il n'en existe pratiquement pas au Bénin, si l'on entend par « lotissement » une opération d'aménagement menée sur un terrain lui appartenant (donc disposant d'un titre régulier), par un propriétaire public ou privé qui, après avoir obtenu une

autorisation de lotir, viabiliserait son terrain pour le diviser en lots destinés à être vendus comme terrains à bâtir.

Les divisions de terrains privés n'en sont pas moins nombreuses, mais ils prennent la forme de simples morcellements, sans aucun aménagement, ni même parfois sans réservation d'emprise pour une viabilisation minimale ultérieure. Quant au terme « lotissement », il est ordinairement utilisé pour désigner des opérations de remembrement et de régularisation de parcelles périurbaines issues de morcellements de terrains coutumiers.

Les facteurs de la dynamique foncière et les conflits fonciers

Les facteurs favorables à la dynamique foncière à la périphérie des villes sont à la fois internes et externes et sont de plusieurs ordres : économique, financier, géographique, juridique et sociologique.

Les facteurs économiques et financiers jouent à la fois un rôle de motivation des acteurs de la transaction foncière et d'accélération de l'expansion de la ville. Ici, il faut évoquer le besoin d'argent qu'éprouvent les ruraux à vendre leurs terres de cultures. En effet, d'après nos entretiens réalisés à Parakou et à Tchaourou, la chute du prix de coton, depuis quelques années, a considérablement affaibli le pouvoir d'achat des paysans qui n'ont plus *pour planche de salut* que de recourir à leurs réserves foncières. L'argent de la vente des parcelles est destiné aussi bien à l'investissement qu'au fonctionnement quotidien de la cellule familiale. Il y a donc la paupérisation liée au faible pouvoir d'achat des paysans qui justifie cette pratique. Cette paupérisation est liée à la stagnation des prix du coton, au retard dans le paiement, à l'endettement. Elle est d'autant plus aiguë que les paysans s'adonnent plus à la pratique de la monoculture de coton. L'un des indicateurs de la misère ambiante qui règne dans les villages et qui nous a été révélé par certains enquêtés est l'état de délabrement de l'habitat. Les propos suivants recueillis dans un village périphérique de Parakou sont patents : « Dans ce village, la plupart des maisons ont été tôlees au moment où le coton coûtait bien. Aujourd'hui, nous avons bien envie de crépir les murs, mais il n'y a pas d'argent. C'est la raison pour laquelle les gens vendent la terre ».

Ces ventes leur permettent de faire face aux dépenses urgentes liées aux cérémonies, aux maladies et aux mariages. Pour les acquéreurs en revanche, ces obligations du vendeur constituent une opportunité à saisir pour acheter les parcelles moins chères. Cette situation plonge les habitants des localités périphériques dans une incertitude permanente qui les oblige à adopter différentes stratégies. Ils éloignent leurs exploitations agricoles ou convertissent leurs activités avec celles urbaines ou encore couplent leurs activités agricoles à celles urbaines.

Quant aux citadins, c'est plutôt à des fins de spéculation anticipative qu'ils achètent des parcelles à la périphérie de la ville. C'est une forme d'investissement à long terme, au regard du prix d'achat relativement bas et de l'importance du bénéfice qu'ils espèrent réaliser plus tard.

La situation géographique des villages périphériques des centres urbains est un autre facteur favorable à la monétarisation des terres. Cette situation offre l'opportunité aux acquéreurs de pouvoir mettre en valeur leurs parcelles avec l'expansion de la ville. Ce facteur compte beaucoup dans les rapports ville-campagne ou centre-périphérie. Aussi constate-t-on que la facilité d'accès engendre la facilité de communication et, par conséquent, la circulation des informations relatives à l'offre et à la demande des parcelles.

A ce facteur de situation géographique, inhérent à la proximité, s'associe l'effet induit de la localisation ou de site des villages. L'accès facile aux villages périphériques qui s'explique par leur implantation au bord d'une route inter-Etats bitumée constitue un élément déterminant dans les transactions foncières entre leurs habitants et les citadins. C'est ce qui explique la préférence des acquéreurs pour l'achat des parcelles au bord de la route et proches de l'agglomération.

Les effets de situation et de site des villes constituent aussi des facteurs déterminants de leur propre expansion. En effet, la position de carrefour qu'occupent les villes de Parakou (qui relie le Niger et le sud Bénin, le Nigeria et l'ouest du Bénin) et de Dassa-Zoumè (qui relie le sud du pays à l'ouest et au nord) constitue un facteur déterminant de leur expansion. Cette position de ville carrefour se trouve renforcée à Dassa-Zoumè par son site constitué de collines de formes pittoresques qui favorise le développement du tourisme et surtout le pèlerinage marial.

Les facteurs qui expliquent l'expansion de la ville de Glazoué sont, pour l'essentiel, d'ordre politique et économique. Au plan politique, autrefois gros village, il devient ville à partir d'une décision politique en 1978 qui a érigé les entités villageoises de plus de 2000 habitants en districts ruraux devenus plus tard sous-préfectures. Cette décision s'est accompagnée de la mise en place d'infrastructures socio-communautaires. De par la position centrale qu'occupe Glazoué dans le nouveau département des collines, elle pourrait départager les trois villes candidates de Dassa-Zoumè, Savalou et Savè qui rivalisent pour abriter le chef-lieu de ce département. L'enjeu que revêt le choix du chef-lieu de ce département constitue aujourd'hui un facteur d'incitation des décideurs à multiplier les infrastructures d'accueil. Au plan économique en revanche, il y a l'existence d'un marché international de vivriers qui occasionne l'installation massive des producteurs et commerçants dans cette ancienne ferme agricole des Idaatcha. A signaler aussi que ce marché est animé par les Nigériens, Togolais et Nigériens. Aussi la construction d'une usine d'égrenage du coton de la Société Nationale pour la Promotion Agricole (SONAPRA) au cours des années 1990 a-t-il drainé l'arrivée massive de jeunes gens dans la localité.

Le dualisme juridique est aussi un facteur de la dynamique foncière autour de la ville. Il existe une coexistence des deux régimes fonciers coutumier et moderne autour des quatre villes qui ont fait l'objet de cette recherche. Si les

chefs traditionnels incarnent le régime foncier coutumier, les délégués ou chefs de villages, représentants légitimes de l'autorité centrale, demeurent les garants du régime foncier moderne hérité de la colonisation par l'Etat. Cette cohabitation est source d'ambiguïté dans la gestion foncière et favorise par conséquent la monétarisation de la terre. Mais cette cohabitation n'est pas statique, elle est dynamique. En effet, la tendance générale est la prédominance du régime foncier moderne sur le régime foncier coutumier. Dans le cadre de cette étude, cette tendance est beaucoup plus remarquée à Parakou et Glazoué qu'à Dassa-Zoumè et Tchaourou où le rythme est encore très lent. Dans ces deux dernières localités, les populations des villages périphériques continuent de céder les terres sur des bases informelles par de simples négociations. A Dassa-Zoumè par exemple, des propriétés collectives sont gérées jusque-là par les collectivités, ce qui a disparu à Parakou et à Glazoué où les travaux de lotissement et de recasement sont intenses.

De ce qui précède, il ressort que le pouvoir traditionnel n'est plus garant de la gestion foncière à la périphérie immédiate de la ville. La conséquence directe de la perte de ce pouvoir est la remise en cause du principe de l'inaliénation de la terre édicté par la coutume qui caractérisait la tradition des Baatombu des villages périphériques de Parakou et de Tchaourou et des Yoruba des villages de la périphérie de Dassa-Zoumè et de Glazoué. On peut alors conclure que le pouvoir moderne prend de l'ascendant sur celui traditionnel en matière de gestion foncière. Or le principe du droit moderne selon lequel la terre appartient à l'Etat semble accorder implicitement au délégué, ou chef du village, le pouvoir de légaliser la vente de la terre, ce qui constitue par conséquent une garantie aux citoyens qui multiplient les demandes d'achats auprès des populations. C'est pourquoi la présentation de la convention de vente signée par le délégué (ou le chef du village) est indispensable à l'établissement d'un permis d'habiter et titre foncier ou de toute autre pièce de propriété.

Plusieurs facteurs socioculturels aussi se combinent pour favoriser le processus des transactions foncières à la périphérie des villes du centre Bénin. D'abord, il faut évoquer la croissance démographique qui, en ville comme en campagne, constitue un facteur d'accélération du processus de monétarisation. En effet, la poussée démographique des villes se traduit par l'augmentation des demandes de logements. L'acquisition des terres se traduit par l'extension spatiale de la ville dont le taux moyen annuel est de 30 pour cent à Parakou et d'environ 22 pour cent dans les autres villes (LARES, Ecocité 2006 et Enquêtes de terrain). Ainsi, le rythme de la croissance urbaine depuis 1960 est passé d'une moyenne de 2 pour cent à 3 pour cent (INSAE 2002). Cela explique la ruée des populations vers l'occupation des terres périphériques comme celles de Komi Guéa au nord, de Thian à l'ouest, de Bakpérou au sud de Parakou, qui coûtent encore relativement moins chères.

Par rapport à la campagne, la poussée démographique a conduit à l'individualisation des droits fonciers. Or ce phénomène a pour conséquence directe la perte de contrôle de la gestion foncière par l'autorité traditionnelle qui, en principe, doit garantir son inaliénation. Placée sous le contrôle et la gestion d'un individu, la terre perd son statut de bien communautaire inaliénable et devient facilement un bien marchand.

Par ailleurs, au-delà du rôle joué par les facteurs sociaux dans la transaction foncière, il faut ajouter leur apport dans l'expansion de la ville. C'est dans ce contexte qu'il faut placer la contribution de la grotte mariale et du sanctuaire du sceptre Sakpata qu'abrite la grotte dans l'expansion de la ville de Dassa-Zoumè. Cette grotte, qui a servi de refuge contre l'invasion des armées du royaume de Danhomè, a joué un rôle de premier plan dans la mise en place des premiers habitants de la ville.

La monétarisation de la campagne est aussi un élément non moins significatif dans le processus de la transaction foncière. Généralement, ce phénomène provient de la ville qui constitue un lieu où naissent les mutations et innovations avant de gagner les campagnes. A la place de l'héritage, principal mode d'accès à la terre, les citadins proposent de l'argent aux ruraux présumés propriétaires terriens. L'achat est donc le mode désormais privilégié pour l'acquisition des terres. Ce fait a fini par révéler aux ruraux la valeur marchande de la terre. Dans ce contexte, on note une opposition farouche entre les personnes âgées et les jeunes plus actifs dans la vente des terres. Ce comportement des jeunes villageois peut s'expliquer par plusieurs raisons : l'appauvrissement des terres agricoles dans les localités périurbaines, dans un contexte d'absence de politique d'intensification agricole, et la croissance rapide de la ville qui télescope certaines des terres agricoles qui lui sont proches.

Ce télescopage de l'espace urbain avec celui périphérique crée des pressions sur les paysans qui finissent par brader leur terre. L'argent reçu du bradage des terres sert parfois aux paysans à créer une ferme plus loin de la ville où il se sédentarise. Les paysans qui résistent à l'expansion de la ville affrontent l'urbanisation et deviennent de néo-citadins, avec les opérations de lotissement. Ces derniers perdent environ deux tiers de leur terre, car, pendant le lotissement, le tiers passe dans les mains de l'administration en guise de la contribution du propriétaire à la mise en place des infrastructures socio-communautaires : c'est le coefficient de réduction. Pour payer les frais de lotissement, le paysan donne à l'administration l'équivalent de ses frais en parcelles, ce qui fait qu'au bout du compte, il se retrouve avec seulement le tiers de ses terres. Dans ces conditions, il abandonne progressivement ses activités agricoles pour embrasser celles urbaines.

La volonté politique des élus locaux est aussi un facteur non moins important. Les quatre villes sont avant tout les chefs-lieux de commune et ont joué, par le passé, un rôle d'encadrement administratif. A ce titre, elles ont abrité des

infrastructures et des équipements qui ont contribué à leur expansion. C'est le cas de l'usine de la SONAPRA à Glazoué, de l'hôpital de Zone de Dassa, de l'hôpital de zone et d'importantes infrastructures à caractère économique et social à Parakou. Si, pendant longtemps, elles ont été négligées par le pouvoir public central faute d'une volonté politique de promotion des villes secondaires, la situation à l'ère de la décentralisation est en train de changer. Les autorités locales sont déterminées à hisser leur ville au rang des villes modernes et optent, pour ce faire, à une politique de lotissement tous azimuts. Elles dotent leur commune de nouveaux outils de gestion urbaine avec l'appui des partenaires (RFU à Parakou et Dassa-Zoumè). La position centrale qu'occupe Glazoué dans le nouveau département des collines, est un facteur incitatif des élus qui leur fait penser que cette ville pourrait départager les trois autres villes candidates (Dassa-Zoumè, Savalou et Savè) qui rivalisent pour abriter le chef-lieu de ce département. Cet enjeu pousse les décideurs locaux à multiplier les infrastructures d'accueil pour augmenter les chances de leur ville. Cette volonté politique des élus se trouve renforcée par la volonté des cadres ressortissants de ces localités de promouvoir leur ville. Cette volonté affichée des uns et des autres se manifeste à travers la politique de lotissement.

Les conflits comme révélateurs de la dynamique foncière

Le « conflit », pour paraphraser le sociologue A. Tourraine, est une relation d'antagonisme qui existe entre des acteurs dont l'un tend à dominer le champ social des autres au sein d'un même espace ou d'un même système social. L'« acteur » s'entend ici comme une personne (physique ou morale) qui mène des actions dans une situation donnée en fonction des ressources dont elle dispose et développe des stratégies pour atteindre ses objectifs ou ses enjeux. La définition de ces deux concepts nous montre que l'Etat (à travers son régime foncier moderne) et les communautés (à travers leur régime foncier coutumier) sont de potentiels acteurs antagonistes. Il en va de même au sein des différents groupes ethniques, des tribus, voire des familles. Comment se manifestent alors les conflits fonciers autour des villes au centre Bénin ?

Caractéristiques générales des conflits fonciers autour des villes étudiées

L'analyse scientifique d'un conflit exige une méthode qui fasse ressortir les éléments suivants : le contexte, les acteurs, le domaine, la nature, les enjeux, l'élément déclencheur, les étapes et les conséquences du conflit.

Les éléments du contexte des conflits fonciers dont il est question ici sont la conjugaison de plusieurs facteurs socioculturels, économiques, historiques, géographiques et politiques, mis en relief par le système foncier en vigueur au Bénin. Par rapport aux acteurs, on peut les classer en quatre catégories selon

leur statut : l'Etat (l'administration locale), les présumés propriétaires terriens, les acquéreurs et les intermédiaires, les courtiers et les auxiliaires de justice. Les domaines de ces conflits fonciers relèvent pour la plupart de l'avoir et du pouvoir. Pour le domaine de l'avoir qui concerne tous les acteurs, il est question de s'approprier, d'accéder, de contrôler ou de gérer le patrimoine foncier pour subvenir aux besoins vitaux. Le pouvoir est plutôt un domaine qui touche l'Etat et les détenteurs des droits coutumiers, notamment les présumés propriétaires autochtones. Les éléments déclencheurs des conflits fonciers sont multiples et complexes dans leur nature. Il y a, entre autres, le non-respect des règles établies par la société (Etat ou communauté), l'appropriation des domaines de tiers, etc. Les enjeux sont souvent contradictoires et varient en fonction des groupes. Cependant, il y a parfois des similitudes.

Les enjeux sont d'ordre politique, économique, social et culturel. Mais, ce qui concerne la nature, on peut identifier trois différents types de conflits. Ils sont à la fois interpersonnels, inter-groupes et institutionnels. Ils opposent des collectivités présumées propriétaires ou des individus, des familles, des clans, des villages, les autochtones et migrants. On distingue des conflits inhérents aux limites administratives. Les enquêtes de terrain ont permis de savoir que des conflits aussi bien ouverts que latents existent entre les communes : entre Parakou et Tchaourou ; entre Parakou et N'Dali ; entre Dassa-Zoumè et Savalou. Pour ce qui est des conflits inhérents à l'histoire du peuplement, il s'agit des conflits d'hégémonie politique et interethnique liés à la gestion foncière. Le cas le plus redoutable à Glazoué et à Dassa-Zoumè est celui qui oppose les « premiers occupants » Idaatcha aux Maxi implantés dans le milieu plus tard. Ce conflit séculaire se manifeste toujours entre les Idaatcha et les Maxi des deux communes (à développer). Si les étapes d'un conflit comportent différentes phases : l'accumulation, la manifestation implicite et explicite, la décantation et la gestion, dans le cas des conflits fonciers ouverts que nous connaissons, la phase de la manifestation explicite est marquée par des actes de menaces ou d'agressions physiques.

Plusieurs modes de gestion ont couramment lieu, comme la négociation, l'arbitrage et l'affrontement. Le choix d'un mode est fonction de la nature du conflit, de la volonté des antagonistes, de la gravité des faits, bref, des circonstances atténuantes ou aggravantes. En ce qui concerne la négociation, c'est un règlement à l'amiable entre les antagonistes de façon directe ou indirecte par la médiation d'un tiers (mode choisi par les élus locaux de Glazoué et Dassa-Zoumè pour accélérer les procédures de lotissement). Souvent les chefs coutumiers ou les chefs de village sont les personnes indiquées. L'arbitrage est le cas des conflits présentés à la brigade de la gendarmerie des localités. L'affrontement est l'extrême mode de gestion des conflits généralement utilisé par les populations pour répliquer aux actes répréhensibles (Thian et Gorobani à l'ouest de Parakou). Dans ce dernier

mode, c'est « la fin qui justifie les moyens » ; tous les moyens sont utilisés, même les plus redoutables et mystiques.

La spécificité des conflits fonciers

Cas de Glazoué et de Dassa-Zoumè

A Glazoué, les conflits fonciers sont, d'une part, interethniques (entre Mahi et Idaasha) et, d'autre part, intra-ethniques (entre Idaasha). Dans le premier cas, le conflit résulte d'une réclamation de droit de propriété par les Mahi dont les grands-parents ont amicalement acquis les terres par prêt auprès des Idaasha. Ce conflit a duré une vingtaine d'années ; cela a retardé le lotissement de la zone B. Les baux finissent aussi par un conflit de propriété en raison de ce qu'ils ne sont pas sanctionnés par un écrit. Les conflits intra-ethniques opposent la famille Affoukou de Zaffé aux populations de Kabolé, anciens propriétaires dépossédés partiellement, au profit de la famille Affoukou, pour la culture de coton sous le régime du président Hubert Maga.

Les populations délocalisées et installées le long des grands axes routiers dans les années 1960 sous le régime du président Hubert Maga s'érigent aujourd'hui en propriétaires terriens des sites d'accueil.

A Dassa, les conflits consistent en une réclamation de propriété par les nouveaux occupants dont les grands-parents ont joui d'un prêt à durée indéterminée. On rencontre aussi des conflits de voisinage.

Notons que les conflits intercommunaux opposent, d'une part, Dassa-Zoumè à Savalou dans les villages de Godogossou, Attaclé, Erokowari et Logozohè et, d'autre part, Dassa-Zoumè (Paouignan) à Covè.

Entre Dassa-Zoumè et Glazoué en revanche, il n'existe apparemment pas ces genres de conflits en raison de :

- l'appartenance à une même ethnie des habitants des villages frontaliers qui sont liés par des pactes ancestraux ;
- l'existence de limites naturelles que sont les rivières et les collines ;
- et l'idée selon laquelle Glazoué est la ferme de culture de Dassa-Zoumè.

Cas de Parakou et de Tchaourou

Les conflits fonciers enregistrés à Parakou et Tchaourou sont de deux ordres. Les premiers sont intra-urbains et concernent la ville Parakou. Les exemples ci-dessous rencontrés dans les quartiers périphériques sont illustratifs.

- A Wansirou-gah : par arrêté, l'ex- circonscription urbaine de Parakou avait conféré au camp militaire une portion de terre allant de la lisière de l'aérodrome jusqu'à Nikki-Kpérou et Dankpararou, soit environ 400 ha.

Aujourd'hui, la partie de ce domaine comprise entre le marché à bétail et le marché de Guéma a connu un début de lotissement qui s'est vu interrompu par la suite en raison de l'opposition des autorités du camp militaire. Après concertation entre administration militaire et de la ville, les deux parties sont tombées d'accord et le lotissement se poursuit de façon à mettre le camp au milieu.

- A Dokparou-est, une portion d'environ 10 ha oppose une communauté de Parakou (Kourobourou) à celles de et de Gbégourou dans la commune N'Dali. Des sources de l'administration de la ville de Parakou, le territoire concerné appartiendrait aux communautés de Parakou, mais il était préalablement exploité par les paysans de Gbégourou. L'affaire pend actuellement au tribunal de première instance de Parakou.
- Au nord-est, les paysans du village Wohré s'installent progressivement sur les terres des populations d'Alafia de N'Dali pour y développer leurs cultures. Cette installation anarchique des paysans de Wohré rencontre l'opposition de ceux d'Alafia qui demandent l'interposition du tribunal de Parakou ;
- Les populations de Gorobani anciennement installées réclament à celles de Thian qui est délocalisé les terres autour de la frontière entre les deux sites ;

Cette situation soulève la question de la problématique des droits fonciers entre villages autochtones et ceux délocalisés. Elle n'apparaît que dans les espaces agricoles ou villageois rattrapés par la ville, c'est-à-dire en cours de lotissement ;

- A Tibona (Albarika) : les terres autrefois accordées gratuitement aux Natimba par les autochtones baatombu ont commencé par être vendues par les premiers, comme s'ils étaient propriétaires terriens. Cette situation a réveillé l'attention des autochtones baatombu qui n'ont, autre moyen pour réclamer leurs terres que de brandir leur appartenance à la cour royale des Sinan-Toragui⁸ chef du cours d'eau emprunté du cours d'eau qui traverse le quartier du côté du nord. C'est alors que les descendants de la famille royale des Sinan-Toragui se sont lancés dans la lutte pour arracher leurs terres aux Natimba en tentant par la même occasion de rejeter le nom « Tiibona » attribué au quartier par les occupants Natimba ;
- A Dépôt : dans la réserve de l'OCBN, la place donnée aux différents agents de l'Organisation pour construire leurs logements afin d'être plus proches de leurs lieux de travail oppose aujourd'hui les occupants à l'administration de ladite organisation. En effet, après environ 40 ans d'occupation des lieux, les descendants des premiers agents se sont approprié le domaine et en ont fait un usage comme leur propriété privée. Les multiples appels au déguerpissement précédés de préavis venant de l'OCBN puis de la justice sont restés pendant longtemps sans réactions de la part desdits occupants jusqu'au jour où l'huissier de justice vint ravager les logements. Cette

intervention s'est cette fois-ci faite à l'improviste, car les occupants ont vu non seulement leurs cases démolies, mais aussi leurs biens endommagés.

- Au nord-est d'Albarika, les populations se sont installées dans la réserve de l'ASECNA. Cette installation des populations a amené l'administration de la ville à prendre la décision de lotir la zone. C'est au cours des premières phases desdites opérations que l'ASECNA s'insurge en propriétaire des lieux pour bloquer le cours normal du lotissement. Les négociations entre les deux parties prenantes ont permis à l'administration de la ville de poursuivre ses opérations, sans toutefois éclairer les limites du domaine à enfin laisser à l'ASECNA. Le schéma de lotissement de cette portion de l'ASECNA laisse les quartiers Albarika et Alaga et le village Kpérou-Guerra encercler ledit domaine de l'ASECNA.

Le deuxième type de conflits fonciers est d'ordre intercommunal et oppose plus les communautés de Parakou et de Tchaourou que celles de Parakou et N'Dali. Ces conflits trouvent leurs sources dans l'inexistence de limites tangibles entre ces communes limitrophes et surtout de l'exiguïté du territoire de Parakou.

Modes de règlement des conflits

Le règlement des conflits se fait souvent à l'amiable avec le roi ou suivant les procédures administratives que les populations qualifient de très longues et coûteuses. Notons que 75 pour cent des cas de conflits fonciers gérés par le tribunal de première instance d'Abomey viennent de Dassa-Zoumè. La nature des conflits enregistrés est liée à l'usurpation d'identité, au stellionat, à la captation d'héritage, à la vente multiple à des personnes différentes, aux problèmes de délimitation de parcelle, à la confusion entre pleine propriété et droits fonciers démembrés, etc.

Avant la décentralisation, le règlement des conflits s'est souvent fait au tribunal de 1^{ère} instance d'Abomey. Les procédures ont duré plusieurs années et, de ce fait, ont retardé les travaux de lotissement. Mais les nouvelles autorités ont opté pour le règlement à l'amiable. Cela permet d'évoluer plus rapidement dans le processus d'urbanisation.

Le règlement des conflits fonciers au centre comme au nord du Bénin révèle différentes démarches en fonction des préférences des populations. Plusieurs instances sont impliquées dans ce processus. Il existe certaines qui relèvent des compétences de l'administration moderne. Il s'agit, d'une part, du chef du village (ou délégué), du comité de lotissement, du chef d'arrondissement ; de la mairie et, d'autre part, des organes de juridiction moderne : la police, la gendarmerie, le tribunal et la Cour suprême. Les premières adoptent le principe du règlement à l'amiable.

Les instances traditionnelles du règlement de conflits fonciers sont les familles et la cour royale composée du roi (ou chef traditionnel), de ses ministres et de quelques notables et sages.

Il ressort de ce qui précède deux modes de règlement des conflits fonciers. Le premier est le mode de règlement par les instances traditionnelles alors que le second concerne les structures mises en place par l'administration publique moderne. La consultation de l'une ou l'autre catégorie des instances dépend du choix ou des préférences des personnes en conflit.

Au niveau traditionnel, les tentatives de règlement partent d'abord du cadre familial pour la cour royale ; le respect de la hiérarchie n'est pas obligatoire. Il est possible d'abandonner la procédure du règlement par la cour royale pour le niveau familial, comme il est aussi possible d'opter pour le contraire. La recherche du règlement à l'amiable par ces instances traditionnelles rend de plus en plus incrédule cette procédure et accorde davantage d'assurance aux structures de juridiction de l'administration moderne qu'à celui traditionnel.

Il existe aussi dans l'administration moderne le règlement à l'amiable. Ici, la démarche respecte la hiérarchie dont la base est la consultation de chef du village (ou délégué) et le sommet la commission des affaires environnementales. Aussi est-il important de signaler que ces instances modernes de règlement à l'amiable consultent parfois, par souci de gestion partagée et de décentralisation, les instances traditionnelles.

Les structures de règlement des conflits fonciers aussi bien modernes que traditionnelles précédemment citées peuvent être occultées en raison du caractère amiable et inefficace de leurs procédures de règlement. Ainsi, certaines personnes préfèrent, sur cette base, se confier aux juridictions mises en place par l'administration moderne. Seules les décisions de cette dernière sont sans recours, même si elle est très rarement consultée. Ce sont surtout les citoyens qui, de par leur niveau d'instruction, se confient à elle. Les masses paysannes courent toujours après les institutions traditionnelles ou parfois modernes de règlement à l'amiable. Les populations apprécient ainsi différemment les instances de règlement des conflits fonciers.

Le processus d'expansion urbaine au centre du Bénin se caractérise par une irrégularité des formes et la spontanéité d'occupation de l'espace, car l'installation des populations est généralement antérieure au lotissement. On note, de ce fait, un développement spontané des quartiers basé surtout sur une occupation anarchique en fonction des plusieurs facteurs qui sont d'ordre économique, financier, physique, social et culturel. Ce processus aux nombreux acteurs et aux enjeux variés et contradictoires est marqué par l'existence des conflits de toute nature, avec des modes de gestion aussi diversifiés. Le caractère conflictuel et de plus en plus violent marque, de nos jours, le « champ foncier » des périphéries de la plupart des villes secondaires en pleine expansion en jouant un rôle très important dans la construction d'identités et de territorialités. Cette situation se trouve amplifiée par l'effet de la politique de décentralisation à l'œuvre dans le pays et qui donne lieu à l'émergence de nouvelles politiques foncières.

Face à tout ce qui précède, il y a lieu de s'interroger sur la manière dont les nouveaux décideurs que sont les élus arrivent à gérer le foncier.

La problématique de la gestion décentralisée des ressources foncières

Depuis 1990, le Bénin a entrepris des réformes politico-administratives avec l'avènement d'un régime démocratique, ce renouveau démocratique a abouti en 2003 au processus de la décentralisation, celle-ci étant définie comme est un système administratif et politique dans lequel certains pouvoirs de décision et de compétences de l'État sont assumés par des organes autonomes généralement élus, ayant personnalité juridique, ressources et autorité propres. Cette libre administration doit se faire à travers le transfert de compétences dans différents domaines et des moyens financiers et humains associés. Il s'agit ainsi de mieux partager le pouvoir entre l'État et les entités décentralisées.

Or, du point fait dans la deuxième partie sur le droit coutumier et positif au Bénin depuis le temps pré-colonial, il ressort que l'Etat reste légalement le principal « chef de terre », même si le coutumier continue d'être pratiqué sur une bonne partie du territoire national. Y a-t-il eu des dispositions législatives qui transfèrent les pouvoirs de l'Etat en matière foncière aux collectivités locales ? Quelles sont désormais les implications des lois de la décentralisation dans la gestion foncière au Bénin ? Quels sont les rapports qu'entretiennent les pouvoirs publics et les populations à la base ? Ces diverses questions méritent d'être posées eu égard aux nombreux problèmes d'insécurité foncière que connaît le pays et qui sont mis en relief plus haut.

Pour répondre à ces interrogations, il serait intéressant de mettre d'abord en relief la situation qui prévalait peu avant la décentralisation, ensuite les textes de lois de la décentralisation relatifs au foncier, leur implication dans la gestion foncière, les pratiques et les difficultés qui en découlent et les perspectives.

Les pratiques de la gestion foncière sous le renouveau démocratique avant l'avènement de la décentralisation

À l'avènement du renouveau démocratique amorcé au début des années 1990, les autorités locales ont mis en place des stratégies de gestion concertée du foncier. Cela concerne :

- la commission des affaires domaniales composée d'élus locaux, des agents des services techniques de la mairie, des chefs de quartiers, des représentants des présumés propriétaires. Elle est chargée de faire l'état des lieux en collaboration avec les propriétaires et d'étudier le morcellement des terres avant tout lotissement. Cela présente l'avantage d'éviter le blocage de travaux de lotissement ;
- les comités locaux de lotissement composés des représentants de tous les acteurs fonciers du milieu. Ils permettent le règlement très rapide et à l'amiable des conflits qui surgissent en cours de lotissement. Il implique aussi les associations de développement ;

- le comité local de gestion de la transhumance comprenant les acteurs de développement rural et qui facilite le règlement de conflit entre éleveurs et agriculteurs ;
- l'insertion du rapport de conseil de famille dans l'établissement des conventions de vente ;
- le tribunal de conciliation qui s'occupe du règlement des cas de litiges domaniaux au niveau communal ;
- et le Régime Foncier Urbain (à Parakou et Dassa-Zoumè) qui joue un grand rôle, notamment dans le contrôle du foncier.

L'ex-circonscription urbaine de Parakou avait mis en place certains organes de direction pour fournir une prestation de qualité à ses administrés. C'est le Comité d'Urbanisme qui avait été établi dans le domaine foncier. Au sein de ce Comité siégeaient toutes les couches socioprofessionnelles et politiques : les services déconcentrés de l'Etat sont représentés par la Direction Départementale de l'Environnement, de l'Habitat et de l'Urbanisme (DDEHU) ; l'Office des Postes et Télécommunications (OPT), la Société Béninoise d'Électricité et d'Eau (SBEE), le Service Régional des Transports et le Service de l'Hydraulique, les maires des cinq ex-communes de la ville, les représentants des chefs traditionnels et des sages de la ville, les forces de l'ordre, les représentant des services techniques de la municipalité et les responsables en charge de la ville. Le comité d'urbanisme était chargé de définir la politique relative aux questions foncières, d'arrêter et d'autoriser les politiques de lotissement, conformément au Plan Directeur d'Urbanisme, de régler les litiges domaniaux et d'autoriser toute attribution de domaine. Toutes les décisions en matière foncière y sont débattues.

Le Comité d'Urbanisme se réunit à tout moment, au regard des nécessités, mais au moins une fois par quinzaine. Le Comité d'Urbanisme faisait donc office de cadre de concertation en impliquant tous les acteurs du foncier. Ses insuffisances sont complétées par le comité de direction (CODIR) qui apparaît comme un cadre par excellence de concertation au service de l'administration de la circonscription urbaine.

De ce qui précède, on note que la question foncière a fait durant la période de transition (1999-2002) l'objet d'une gestion concertée impliquant aussi bien les représentants de l'administration publique que des administrés. Mais qu'en est-il à l'heure de la décentralisation ?

La gestion décentralisée du foncier par les communes à l'avènement de la décentralisation

Les dispositions juridiques de la gestion foncière par les communes

Les textes de la décentralisation ont consacré quelques articles pour définir les domaines de compétences des communes en matière foncière :

Le domaine communal comprend le domaine public et le domaine privé (article : 111).

Font partie du domaine public communal (article 112) :

- les terres appartenant à la commune et qui ont reçu, de droit ou de fait, une affectation locale comme les rues, les routes, les places et jardins publics aménagés ;
- les terres appartenant à la commune et qui supportent des ouvrages d'intérêt public chaque fois que la charge incombe à la commune ;
- les terres appartenant à la commune constituant l'assiette d'un ouvrage prévu au plan d'aménagement ou d'urbanisme ayant fait l'objet d'une déclaration d'utilité publique et affectées à la réalisation d'un équipement ou service public ;
- tous les autres biens compris dans le domaine public lorsqu'ils ont été transférés à la commune conformément aux dispositions législatives et réglementaires relatives au domaine public ;

le domaine public de la commune est soumis au même régime que le domaine public de l'Etat. Il peut faire l'objet d'occupation temporaire révocable moyennant paiement de droits fixés par le conseil communal (article 113). Font partie du domaine privé de la commune (article 114) :

- les biens immobiliers non affectés à un service public, mais que la commune entend garder en propre en vue d'aménagements ultérieurs tels que les immeubles ou réserves foncières ;
- les biens patrimoniaux.

Le domaine privé de la commune est soumis au même régime que le domaine privé de l'Etat (article 115).

Au regard du contenu de ces articles, on s'aperçoit que le législateur béninois a clairement défini les prérogatives de l'Etat et celles des communes afin d'éviter d'éventuelles confusions en matière foncière. La question qu'il importe de se poser est de savoir comment les collectivités locales appliquent ces lois sur le terrain.

La pratique de la gestion foncière à l'ère de la décentralisation par les collectivités locales

Pour faire face aux sensibles questions foncières, la loi a fait obligation aux communes de créer en leur sein une Commission des Affaires Domaniales et Environnementales (article 36 de la loi N° 97 – 029 du 15 janvier 1999 portant organisation des communes en République du Bénin). A plusieurs égards, cette loi souffre d'un certain nombre d'insuffisances.

La première insuffisance est relative à la composition des membres de cette commission. Elle regroupe exclusivement les élus. Cela limite l'implication des autres composantes de la communauté. La deuxième est inhérente à la non

clarification, par le législateur, du mode de fonctionnement de ladite commission. Par ailleurs, le non transfert des ressources humaines aux communes favorise les interprétations tendancieuses des textes dans un contexte où la majorité des élus sont d'un niveau d'instruction très bas, ce qui aggrave les problèmes fonciers déjà épineux.

Dans la commune de Parakou par exemple, l'arrêté municipal n°50/022/M/CAB du 20 mars 2004 portant gestion des affaires domaniales dans la commune stipule en son article 4 que « la gestion des affaires domaniales de la commune est assurée par les services de la mairie sous la supervision des chefs d'arrondissement et sur le contrôle du Comité Spécial Chargé du Contrôle et du Suivi de la Gestion des Affaires Domaniales ».

Cet arrêté place les services de l'urbanisme et des affaires foncières de la mairie sous la responsabilité des chefs d'arrondissements. Désormais, les affaires domaniales de la commune n'impliquent que les élus et les responsables techniques concernés de la mairie. Par conséquent, les services déconcentrés de l'État (SBEE, PTT, DDHU, etc.) ne sont plus impliqués. Si cet arrêté est conforme aux dispositions de la loi de la décentralisation et reste dans le cadre des compétences des autorités municipales, on voit cependant qu'il remet en cause une pratique démocratique fondée sur la concertation. L'exercice des pouvoirs accordés aux élus ne semble-t-il pas montrer les limites de la loi dans ce domaine lorsqu'on pense à la désapprobation de certains chefs de services techniques. En effet, d'après les informations recueillies, l'attribution des marchés de lotissement se fait par les chefs d'arrondissement sans toujours associer les services techniques. Or l'article 3 du même arrêté demande aux services de la mairie chargés de la gestion des affaires domaniales de rendre hebdomadairement compte de leurs activités avec les chefs d'arrondissement au maire. Dans le même temps, l'arrêté souscrit que le chef d'arrondissement a la possibilité d'agir sur le terrain sans l'agent technique des affaires domaniales. Il se pose là un problème de coordination et de responsabilité, si l'on sait que l'élu et le technicien sont appelés à rendre compte au maire de leur gestion qui n'est pas toujours concertée.

Le besoin de concertation n'est pas ressenti qu'au seul niveau de la mairie entre les élus et leur personnel, mais également entre élus, d'une part, et entre la collectivité locale et la population à la base, d'autre part.

L'implication des réformes sur le foncier

Pour mieux appréhender l'impact des réformes sur le système foncier, il serait intéressant de faire ressortir les objectifs de ces réformes.

La question foncière implicitement liée aux objectifs des réformes

En s'engageant dans une politique de décentralisation, le gouvernement du Bénin entreprend de transférer aux collectivités locales un certain nombre de

fonctions et de compétences. Les objectifs ainsi poursuivis sont d'ordre politique, administratif, social, économique et culturel.

Au niveau politique et administratif, les objectifs visent, d'une part, la responsabilisation des citoyens et, d'autre part, l'efficacité de l'administration. Il s'agit donc de réconcilier la société avec l'Etat à travers la mise en place de systèmes de gestion politique locaux d'essence démocratique. Autrement dit, il faut concevoir et instaurer une administration résolument tournée vers la promotion de la vraie démocratie à la base et une administration capable de libérer les initiatives et les énergies locales en vue d'un développement harmonieux de toutes les régions du pays. Au niveau socio économique et culturel, les objectifs des réformes visent surtout la participation et l'implication des populations au développement local, c'est-à-dire la mise en œuvre de tous les moyens pouvant créer les conditions nécessaires à la mobilisation des ressources ou des capacités locales pour un essor économique social et culturel des localités.

Au regard de ces objectifs, on peut émettre deux remarques. D'abord, la libération des énergies et des initiatives locales pour la promotion d'un développement harmonieux des régions du pays suppose la garantie de la « sécurité foncière »⁹ au centre Bénin, essentiellement caractérisé par les activités du secteur primaire. Ensuite, la mobilisation des ressources locales pour un essor économique, social et culturel implique la valorisation des richesses du centre Bénin qui reposent sur le patrimoine foncier. Aussi la loi financière autorise-t-elle les collectivités locales à taxer le foncier.

Théoriquement, on voit à travers ces objectifs que la décentralisation obéit à une logique de subsidiarité avec le double souci d'efficacité dans la gestion et de légitimité démocratique, en rapprochant les centres de décisions du citoyen et de son contrôle. Encore faudrait-il que cette démocratie soit participative et non représentative pour relever les nombreux défis liés à la question foncière que suscitent les réformes.

Les enjeux et défis fonciers liés aux réformes

Les implications des réformes sur le système foncier sont plus en termes d'enjeux et de défis. En effet, les mutations auxquelles sont soumises les collectivités locales par rapport au système foncier dépendent du type de démocratie effectivement instaurée. Par principe, la démocratie n'est pas une donnée définitivement acquise, mais elle est plutôt en perpétuelle conquête. Et si le rôle des nouvelles collectivités territoriales est la gestion des affaires locales, il est évident que la gestion des ressources foncières occupe une place déterminante dans la vie des pouvoirs publics locaux. Or le développement harmonieux de l'ensemble du territoire ne peut se faire sans qu'aucune disposition légale ne soit prise pour réglementer les droits fonciers en vigueur avant la décentralisation. Les ressources foncières apparaissent désormais au premier plan au niveau local.

Le contrôle de la terre permet d’abord l’exercice des compétences de base des collectivités, par exemple l’aménagement de l’espace, la mise en place des voiries et équipements de base, les lotissements dans les zones urbaines. C’est l’argument de fonctionnalité de la question foncière. Mais la gestion domaniale permet ensuite de créer les conditions d’une meilleure disponibilité des ressources locales. Le foncier est générateur de la majorité des ressources locales de nature fiscale, en particulier les taxes foncières, les patentes. Il est aussi générateur de ressources exceptionnelles, « extra-ordinaires », qui sont, théoriquement au moins, destinées à financer les investissements locaux, sous la forme de résultat des ventes de parcelles dans les lotissements créés par les collectivités. Celles-ci, dans les faits, sont contraintes par les difficultés budgétaires autant que par les silences des textes domaniaux à utiliser les ventes de terrain pour boucler les budgets courants, ce qui explique la surproduction de ces lotissements au regard des besoins réels, et ces croissances souvent exagérées d’occupations spatiales urbaines non mises en valeur.

C’est dans ce sens qu’on peut comprendre la multiplication des lotissements dès l’installation des nouveaux élus de la municipalité de Parakou. En effet, dans le but d’accroître les recettes fiscales de la ville, plusieurs lotissements ont été réalisés aussi bien au centre-ville qu’à la périphérie. Cela est d’autant plus nécessaire que le transfert des ressources de la part de l’Etat n’a pas accompagné la décentralisation. Mieux, l’expérience du Registre Foncier Urbain (RFU) dans la ville de Parakou avant l’avènement de la décentralisation est édifiante. De 1989 (début RFU) à 2002 (élection municipale début de la décentralisation), le recouvrement des taxes fiscales sur le foncier bâti à Parakou est passé de 24 millions à 231,9 millions, soit un taux de 966 pour cent.

De la même manière, les élus de la ville de Parakou envisagent d’importants projets de construction des infrastructures de grande d’envergure. En effet, dans le souci de changer l’image de cette ville et de la placer au rang des villes modernes du pays, il est prévu d’implanter plusieurs équipements et services, comme l’indique le tableau suivant. A ce sujet, d’importantes réserves administratives ont été délimitées à la périphérie de la ville où se pratiquent les champs.

Tableau 9.1 : Liste des projets d’équipements et de services de la ville de Parakou

Nature du projet	Superficie	Situation géographique
Lycée des jeunes filles	10 ha et plus	Guéma-ouest
Ecole de football (France-Bénin Football Club Plus)	10 à 12 ha	Ganou nord-est
Deeman radio	collines	Ganou-nord
Université	-	Tourou-ouest du côté de l’antenne

Centre de protection des mineurs + internat	08 ha	Tourou-ouest du côté du collège
Cour d'appel + logements	04 ha	Thian (100m avant le PPP des deux côtés de la voie)
Parking des gros porteurs	10 ha	Albarika : dans la zone industrielle après le Lasdel jusque vers Gannon
Port sec	50 ha	Le long des rails vers Gannon
Zone industrielle	120 ha	Albarika
Siège de l'Association Internationale du Coton (AIC)	20 parcelles	Oké-dama après la gare routière
Caisse Nationale de Sécurité Sociale (CNSS)	10 ha	Bèrouyarou en face du parc auto
Stade omnisports	5 ha	Bèrouyarou

Source : Enquêtes de terrain

Mais en dehors de ces enjeux, il y a aussi des défis à relever et le premier est relatif à la question des limites intercommunales. La question fondamentale se pose en termes de recouvrement des redevances par la commune dont les ressources naturelles sont exploitées par les populations d'une commune voisine. On note une incursion de Parakou dans le territoire des communes de Tchaourou et de N'Dali où sont ouvertes des carrières de sable et de gravier exploitées par les populations de Parakou. Comment régler cette question sans compromettre la solidarité intercommunale prévue par les lois de la décentralisation ? Doit-on penser que la coopération intercommunale est la solution idéale à la question de la précision des limites entre communes ?

Un autre défi est celui de la satisfaction des besoins de concertation au sein des populations dans la gestion du foncier. Ce besoin s'exprime au sommet à travers le conflit interne entre les élus locaux en général et aboutit très souvent à des menaces de destitution. On en veut pour preuve les nombreux communiqués et conférences de presse de certains élus et responsables locaux de Parakou pour fustiger le manque de concertation et de transparence dans la gestion des affaires domaniales surtout.

A la base, ces besoins sont exprimés par les organisations de la société civile.¹⁰ En effet, selon les résultats de l'étude qui a porté sur la composition de la société civile à Parakou en 2004, ces organisations ont déploré l'absence d'un creuset de rencontre entre les acteurs du développement local et la mairie. Entre autres priorités, elles ont exigé de la mairie la création d'un cadre de concertation pour un véritable partenariat afin de conjuguer tous les efforts pour le développement harmonieux de la commune de Parakou.

La nécessité d'articuler les logiques foncières

La loi foncière légalement en vigueur au Bénin jusqu'à ce jour est celle de 1965 qui combat, dans ses dispositions, le régime foncier coutumier. Or, si la politique de la décentralisation amorcée vise à favoriser l'implication des populations à la base pour la gestion de leurs affaires, il faut absolument opérer un changement dans l'organisation des modes de gestion des ressources naturelles en général. Aucune gestion durable des ressources naturelles n'est aujourd'hui possible sans que le statut foncier ne soit clarifié lorsqu'on sait que la cohabitation du régime foncier coutumier et du régime foncier moderne est la principale source des conflits fonciers au Bénin (Akobi 2002). Il importe alors qu'une nouvelle loi soit élaborée pour accompagner les réformes en cours.

Il faut avouer que c'est une condition nécessaire pour déclencher le processus de développement local puisqu'il exige le cheminement de tous les acteurs autour d'un projet de société. Or ce cheminement n'est pas possible si ces derniers sont opposés par des conflits fonciers. Et si, à l'étape actuelle, ni le régime foncier coutumier ni le régime foncier moderne ne peuvent offrir toutes les garanties d'une gestion rationnelle des ressources naturelles ; il importe alors de trouver un mécanisme pour articuler toutes les logiques d'appropriation foncière dont la cohabitation est actuellement source de nombreux conflits entre les acteurs locaux.

De la même manière, jusque-là largement limitée à une confrontation de deux groupes d'acteurs, l'État, d'une part, les personnes privées, d'autre part, la question foncière est aujourd'hui relancée par l'émergence, d'un autre groupe d'acteurs publics locaux, à la faveur des processus de décentralisation liés à la démocratisation. Le droit foncier apparaît donc comme un enjeu essentiel de répartition des pouvoirs et, en même temps, de légitimité des acteurs publics. Le monopole de l'État semble désormais remis en cause au Bénin. Des pratiques non conformes aux dispositions légales et réglementaires font l'objet de conventions privées, soumises ensuite à une sorte d'authentification administrative. Elles suivent une procédure bien établie, permettant aux acteurs concernés de disposer d'un papier attestant non pas d'un droit déterminé, mais de la légitimité du lien juridique nouvellement créé.

La démarche « papier » entérinée par le comportement des acteurs publics établis légalement est fréquente. Les transactions juridiques de « cessions » sont régulièrement soumises à une procédure d'authentification, dont le maire est in fine l'acteur principal. Des témoins sont convoqués, un écrit rédigé, une confrontation des parties organisée, à l'issue de laquelle le « papier » qui atteste de la convention privée devient un acte visé par l'autorité administrative. Des frais sont même prélevés pour cet enregistrement qui ne dit pas son nom.

En somme, ce chapitre nous a permis d'exposer brièvement le contexte de la décentralisation au Bénin et de dégager la problématique de la question foncière que cette réforme soulève par rapport à certains de ses objectifs visés. Le

développement local constitue le point d'ancrage de cette réforme et exige des élus locaux un effort croissant de mobilisation des ressources financières locales qui, pour l'instant, reposent essentiellement sur les ressources naturelles dont le foncier est le socle. Les nombreux enjeux que comporte la gestion du patrimoine foncier sont en même temps porteurs de défis à relever. Pour réussir ces réformes, il nous semble indispensable d'élaborer de nouvelles lois pour articuler les logiques de gestion foncière.

Conclusion

Les multiples migrations des peuples de l'Est (Nigeria) ont été à l'origine du peuplement de la plupart des villes du centre Bénin entre le XVe et le XIXe siècles. Dans cette région du pays comme dans la plus grande partie du territoire national, le foncier est régi par les droits coutumiers qui forment aujourd'hui un ensemble hétérogène composé des anciens droits coutumiers traditionnels et des pratiques modernes.

Ces droits coutumiers traditionnels résumés autrefois dans le « Coutumier du Dahomey » et hérités des civilisations pré-coloniales se ressemblent, à quelques nuances près, d'une localité à l'autre et d'une ethnie à l'autre. Ils sont encore en vogue dans certaines zones rurales et correspondaient au fonctionnement d'une société de type féodal et non monétaire. La pression démographique et la croissance galopante des villes engendrent de nos jours le développement d'une sorte de propriété coutumière moderne, qui n'est pas une vraie propriété au sens juridique, dans la mesure où elle n'est pas reconnue par le droit positif, mais qui est plus qu'une simple possession puisque les mutations à titre onéreux s'y pratiquent. Ces ventes sont ignorées par la loi sans être formellement interdites. Elles sont reconnues et même enregistrées par l'administration.

C'est dans cette complémentarité « coutumier, moderne » que fonctionne actuellement le système foncier au centre du Bénin comme dans tout le pays en général. On note cependant une ascendance de plus en plus accrue du régime moderne sur celui coutumier au fur et à mesure que l'on s'éloigne du sud pour monter vers le nord. On enregistre cependant des formes de résistance du régime coutumier face à celui moderne avec la décentralisation à l'œuvre.

Cette dualité vient allonger la liste des acteurs du foncier dont les pratiques parfois contradictoires et les stratégies sont fondées sur les intérêts de chacun d'eux. Ainsi, avec la décentralisation, on a assisté à l'émergence d'une nouvelle classe d'acteurs du foncier, les premiers acteurs étant les maîtres coutumiers, les chefs traditionnels ou « chefs de terre », comme on les appelle au nord du Bénin, l'administration territoriale, l'administration fiscale, les géomètres, l'Institut Géographique National, les notaires et les banques auxquels viennent s'ajouter les élus locaux qu'il convient d'appeler, dans le contexte de la décentralisation, « les nouveaux acteurs » du foncier.

La multiplicité des acteurs du foncier est la cause des innombrables problèmes enregistrés aujourd'hui dans la filière. L'analyse du fonctionnement du système foncier révèle cependant que c'est l'action administrative elle-même qui est à l'origine d'une bonne partie de l'insécurité foncière dont souffre la population. L'Etat ne joue pas son rôle de contrôle des droits sur le sol, d'une part, et entretient l'insécurité foncière pour mieux asseoir une autorité fragile, d'autre part. Cette fuite de responsabilité de l'Etat entretient sur le terrain des confusions sur plusieurs points :

- absence d'immatriculation des terres : ce sont seulement les parcelles privées des milieux urbains qui portent des marques d'immatriculation. Les rares marques de l'administration publique en milieu rural, préludent la mise en place d'une infrastructure d'un service de l'Etat. Les réserves administratives de l'Etat ne sont pas immatriculées même en milieu urbain ;
- plans cadastraux et titres fonciers : ils sont élaborés pour comprendre l'armature et l'aménagement urbain. Les parcelles disposant de titres fonciers appartiennent, dans la plupart des cas, aux individus et on les rencontre généralement au cœur des grands centres urbains ou dans leurs périphéries. Elles s'érigent contre les expropriations et abritent des fermes de plantations de tous genres ;
- l'ignorance des textes en vigueur sur le foncier à cause de l'analphabétisme des populations et surtout de la volonté inefficace de l'administration publique à les enseigner à ces dernières. Dans la pratique, les juristes s'appuient souvent, à défaut d'une autre documentation disponible, sur des manuels de droit français, la plupart des principes juridiques étant restés communs. Mais cette similitude n'existe précisément pas dans le domaine du droit foncier. En la matière, les anciens principes du droit colonial, toujours en application pour l'essentiel, sont en effet toujours diamétralement opposés à ceux qui étaient et sont encore appliqués en France. Les interférences entre les deux droits peuvent alors avoir des effets imprévisibles et conduire à des incohérences.

Tout projet de réforme du droit foncier devra donc s'attaquer en priorité à la mise en œuvre d'une publicité effective de ce droit, condition nécessaire, sinon suffisante, à sa prise en compte. Le constat est fait à travers l'examen d'une quinzaine de pays : le foncier ne fait pas partie des compétences transférées. L'Etat entend conserver la maîtrise de la terre, même si des évolutions inverses commencent d'être esquissées dans certains pays.

La décentralisation, aujourd'hui à l'œuvre au Bénin, devrait servir de palliatif pour sécuriser les terres non seulement en milieu urbain, mais aussi et surtout en milieu rural. Pour ce faire, la gestion domaniale, plus encore que le contrôle du foncier, devrait constituer la compétence fondamentale des autorités locales, en particulier celles dites du niveau de base, donc la commune. Elle devrait permettre aussi aux pouvoirs publics locaux de consulter les autres acteurs de la société civile pour la gestion partagée et durable des ressources foncières.

Notes

1. Pour avoir une idée de la situation géographique de ces villes à l'échelle nationale, voir la carte de localisation.
2. Loi n°98-005 du 15 janvier 1999 portant organisation des communes à statut particulier.
3. Loi n° 97-029 du 15 janvier 1999 portant organisation des communes en République du Bénin.
4. Cette situation est depuis longtemps perçue par les natifs de cette ville comme une injustice à corriger, ce qui est présentement à l'origine de l'élaboration d'un programme de réhabilitation de Porto-Novo.
5. On peut mentionner des noms comme Hubert Maga (1^{er} président de la République de l'ère des indépendances), El-Hadj Maman Foudouga (ancien ministre), Yérima Korogone (fonctionnaire), Souleman (chef de district de N'Dali).
6. Le Sodabi est une boisson locale fabriquée à base de divers produits, notamment le vin de palme fermenté et distillé.
7. Abdoulaye Garba fut pendant longtemps directeur départemental de l'Environnement, de l'Habitat et de l'Urbanisme dans les départements du Borgou- Alibori.
8. Sinan-Toragui est le ministre de la Défense de la cour royale de Tourou.
9. La « sécurité foncière » se définit comme le fait de mettre en sécurité des acteurs relativement au droit foncier. Cela implique des règles de gestion foncière appropriées et légitimes.
10. Cette étude est réalisée par les consultants du LARES, sur le financement du SNV-Bénin et de la mairie de Parakou. Au total, 242 structures ont été recensées et regroupées en 8 catégories d'acteurs, à savoir associations de développement, organisations professionnelles, organisations confessionnelles, lobbies, associations artistiques culturelles et sportives, organisations non gouvernementales, coopératives et associations à la base.

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Abréviations et sigles utilisés

ABOUDOU	Ramanou & AKOBI K. Innocent
AOF	Afrique Occidentale Française
COBEMAG	Coopérative Béninoise de Matériel Agricole
CODESRIA	Conseil pour le Développement des Sciences Sociales en Afrique
COTEB	Complexe Textile du Bénin
ECOCITE	Ecosystème de la Cité
IBETEX	Industrie Béninoise de Textile
INSAE	Institut National des Statistiques et de l'Analyse Economique
LARES	Laboratoire d'Analyse Régionale et d'Expertise Sociale
OCBN	Organisation Commune Bénin - Niger
OHADA	Organisation pour l'Harmonisation en Afrique du Droit des Affaires
RFU	Registre Foncier Urbain
RGPH	Recensement Général de la Population et de l'Habitation
SONAPRA	Société Nationale pour la Promotion Agricole
SOBEBRA	Société Béninoise de Brasserie
SEHRAU-SA	Société d'Etude Régionale, de l'Habitat et d'Aménagement Urbain

Electing Land Questions: A Methodological Discussion with Reference to Abahlali base Mjondolo, the Durban Shack-dweller Movement¹

Rajeev Patel

While class struggle constitutes the motive force in history, it is not always clear and pure as class struggle and may take varied forms under different concrete situations. In non-revolutionary situations, much of the class struggle is latent and even unidentifiable as such at any particular moment. Talking about class struggle at such times is really registering the fact of class struggle *ex-post facto*. The development of *classes* and class struggle can only be talked about tendentially, in terms of historical trends. In fact, classes hardly become fully class-conscious except in situations of intense political struggle. Class consciousness does not fully dawn upon individuals until they are locked in political battles. It is not surprising to find bourgeois critics of Marx always pointing to the proletariat's lack of class consciousness as an incontrovertible proof of the falsity of the theory... the conclusion is derived from a wrong premise through a wrong method.

Issa Shivji, *Class Struggles* in Tanzania (1975: 8)

Narratives about the land question in South Africa often have a similar structure. They will begin by observing that the distribution of land in South Africa is, by any measure, vastly unequal. They will often note the skew of land ownership, citing the 13 million people crowded into the homelands (Lahiff 2001: 1), in contrast to 87 per cent of the land appropriated by white colonial farmers (Thwala 2003). This is often accompanied by some gesture towards the colonial

origins of this distribution, often pointing to 1913, the date of the South African Native Lands Act, a moment that consecrated the geography of apartheid. Some narratives will note, often critically, that in its post-apartheid hearings on the land reform process, the South African government's insistence that 1913 was the non-negotiable date from which consideration of restitution should begin despite the fact that a great deal of dispossession predates the Native Lands Act.

From a sometimes reluctant acceptance that 1913 defines the current government's position, the story will jump to 1994, with the government's bright hopes for redistribution. The three kinds of government-sponsored land-reform processes will be outlined: redistribution, restitution and tenure reform (Mapadimeng 2003). Then, depending on the author's interests, the narrative forks: some accounts might compare the government's failure to live up to its 1994 promises of redistribution or land tenure reform; some commentaries might note the World Bank's influence on the policy process, together with its unrealistic cost projections, and this might be used to explain the ANC's disappointing pace of land reform (Williams 1996). Organised social movement resistance to the pace of the reform might be explored in other examinations (Greenberg 2004), or perhaps the difficulty of overcoming chiefly objections (Ntsebeza 2003), a legacy of the sedimented colonial dualities of citizen and subject (Mamdani 1996). The logistical scale of the task facing the ANC in its promise to complete restitution of all land claims before the end of 2005 will be problematised in yet other examinations. Citizenship, and its shifting historical contours (Marks 1986), the once-inseparability of land from claims of freedom and independence (Mbeki 1964): these constitute other branches from the trunk of land literature, and ones that have also received recent critical scrutiny (Bernstein 1996).

Many scholars, further, take the land question to be the correlate to the (somewhat vaguely defined) agrarian question (see McMichael [forthcoming] for a helpful review). Under these accounts, land features primarily as a productive resource, a means of production. It does so because the internal logic of the account views class formation and struggle as premised on the basis of the ownership of the means of production, in this case, land. High peasants and feudal lords are able to oppress on the basis of ownership of land – the landless, serfs and sundry subalterns suffer as a result of their lack of ownership. Struggle ensues.

Of course, I am doing some violence to these texts – from Mbeki to Ntsebeza, there is a more radical interpretation possible through this literature (see Hendricks 2003; Hendricks 2004, for a synthesis). Yet with the South African government increasingly keen to write itself a narrative against Zimbabwe (Moyo and Yeros 2005), a narrative in which the government can accept difference and adopt a 'big tent' approach, the land question seems, at least as far as the government is concerned, to have been sewn together. The land question has become fixed under the sign of redistribution – it is a question of the mechanisms of transfer of

individual property rights, from one racial group to another. It is carried out under the aspect of racial justice, which in turn has come to mean a particular 'rule of law', one that is compatible with the building of a new black middle class.

Yet despite the tendency for studies around land to take a similar point of departure, and a similar set of premises, a gamut of answers, a clear definition of the question seems elusive. Or, better, it seems clear that the 'land question' refers to different clusters of social, political and cultural problems, for different people, different scholars, different groups. It is an issue that invokes complex issues of history, entitlements, politics, economies, geographies, religions and social relations. In deploying the 'land question', in laying it on the table, one stakes a vast complex of claims. Yet despite its original complexity, the land question invariably gets collapsed into a range of slightly more tractable, manageable, problems – whether this collapse is authored by the state, the party, the coalition or the community organisation. This chapter takes an orthogonal view of struggles over land, in order to reiterate a methodology that, while not new, has been applied a little less frequently than one might have hoped, with the result that a good number of questions over land have not been asked.

The chapter argues that to cede a specific interpretation of the 'land question' is to accept a constellation of assumptions which 'think for us', and which come to constitute an epistemic community after the fact. Particular conceptions of justice and law, for example, regulate whether certain courses of action and change are possible or indeed 'thinkable'. It is unthinkable in South Africa at the moment, for instance, that land would be nationalised and private property relations revoked, whereas it was a provision that was, in Mozambique, a prerequisite for peace (Nhantumbo 2000).

The boundaries of the possible, and the thinkable, are sites of struggle. The World Bank, for instance, offers dehistoricised extrapolations in the service of specific productive arrangements that seem to owe more to specific ideological commitments than to evidence about land. Compare, for example, the World Bank's 1981 report, also known as the Berg report, to Kinsey and Binswanger (1993), and to the World Bank's more recent report on the land question (World Bank 2002). These understandings of 'the land question' invoke specific history, economics and politics; they also spawn specific debates, specific areas in which disagreement is possible and can be rendered sensible, and they both recommend specific policies. Adopting a particular understanding of the land question is to have made, to some extent, a prior ideological commitment to a specific knowledge about that question's content and, therefore, to have prefigured the answer to the question before one has even begun to explore it. Through relations of power such as these, women are rendered invisible from the land question (Whitehead and Tsikata 2003). As Shamim Meer notes in her *Women, Land and Authority: Perspectives from South Africa*, existing approaches to women's effective disenfranchisement:

tend to suggest quick-fix solutions. [which result] in a simplification of the problem at hand, an underestimation of the complexities involved and a tendency to assume that legal and technicist solutions will adequately address the problem (Meer 1997:1).

Such solutions, as Walker notes, depend on fixed historical assumptions of racial purity, gender relations and ratiocinated understandings of the state (Walker 2000; Walker 2003). These solutions, I argue, will never be adequate to the problem because they are only thinkable as a result of the possibility of deeper issues around gender being erased (Agarwal 1994; Deere and León de Leal 2001). In other words, the failure to subject the land question to scrutiny is not only an academic deficit – it has real-world repercussions in the domain of policy and justice.

In this methodological intervention into the land debate, I want to unpick the question of ‘who owns the land’ by destabilising two terms in the question – the notion of ownership, and to understand this not as a productive resource, but as a means of reproduction. The idea of ownership, as Shivji notes in his study (1975), deserves to be the object of circumspection. ‘Ownership’, as the regulatory institution with which we are familiar, in which people are able to own their labour power in the same way that they own other factors of production, is barely 500 years old. Indeed, modern capitalism is premised on a notion of ownership of land (Wood 2000). Without the process of Enclosure, its privatisation of land and concomitant alienation of labour, labour markets would not exist, and without them, no modern capital.

The key here is the character of social relations around land. Land itself need not be a productive resource. It can, for instance, feature in a narrative in which it is exclusively a reproductive resource, which is to observe that it is a prerequisite for social reproduction, for the maintenance of labour. The army of surplus labour, after all, needs somewhere to sleep. By taking the productive character of land out of the land question, it becomes easier to see that the posing of good ‘land questions’ involves asking not just who owns the land and who wants it, but which institutions regulate space and place, the people produced through this regulation and the struggles against it, as Massey notes in her *Space, place, and gender* (1994). In order to understand ‘land questions’, we need to understand how people relate to the materiality of land, how they themselves are constituted in space relative to one another, and to their environment. In other words, in this chapter I look at how land is constituted in stories about control and ownership, how it is misdiagnosed, and how it is central in the development of a politics in which class and class consciousness feature increasingly.

The argument I make is that the materiality of land, its place in space, and its meanings are all subject to contestation, construction and reconstruction. There is a dialectical relation through which the land question is lived. To ask a land

question is to ask, in effect, about the history of social relations, and their present configuration, and about where the meaning of land is at the moment. And, more than this, as Pierre Hadot has observed about philosophy (Hadot 1995), the land question is not merely an academic question – it is a way of life.

Theory

Among the institutions that shape, and in turn are shaped by, these interactions are four that are often elided: nation, citizenship, state and party. These are far more slippery terms than they might at first appear because a suitable deconstruction of each would then involve an investigation into how each of them in turn regulates community, family and body (Derrida 1976). Each of them – nation, citizenship, state and party – is subject to the striations of gender and race, and each has its own internal contradictions, fiercely fought over. There is tension in almost every part of sufficient size between ‘leadership’ and ‘grassroots’. In any country of non-homogenous identities, traditions and backgrounds, which is to say in every country, the terrain of ‘nation’ is deeply contested (Anderson 1983). The state itself is far from homogenous, with its various fiefdoms and bureaucracies the subject of the very earliest sociological enquiry (Weber, Henderson and Parsons 1964).

I note the lack of fixity around these terms to draw attention to the fact that there is a constant and ongoing attempt to fix the meaning, ambit and understanding of each of them, through both the power of state and party, but through struggles in the streets and in the home. The mechanism through which many land questions already think their answers for us lies in the uninterrogated meaning of each premise, which has already been fixed according to a relation of power. Foucault’s thoughts on the relation of power and knowledge are important guides here. He argues that,

There is a battle ‘for truth’, or at least ‘around truth’ - it being understood once again that by truth I do not mean ‘the ensemble of truths which are to be discovered and accepted’, but rather ‘the ensemble of rules according to which the true and the false are separated and specific effects of power attached to the true’, it being understood also that it’s not a matter of a battle ‘on behalf’ of the truth, but of a battle about the status of truth and the economic and political role it plays. (Foucault 1980:132)

Truth, then, is itself the subject of contest. By aiming at specific configurations of truth, the production of knowledge attempts to stake out a territory within, takes an explicit relation to, and attempts to shift existing relations of power. This is process through which material and ideological clashes are fought daily (Antonio Gramsci 1992). Gramsci’s understands hegemony as the permanent politics of move and counter-move, fought not merely by classes but through subtler co-optations and blocs, reflecting the configuration of forces within classes, that aims

to secure and maintain domination through a mixture of coercion and consent. The meaning of terms matters, for meaning is both an object of struggle, and the means to secure further victories. If consensus can be created through the limitation of the ambit of a question within certain parameters, a struggle is won before it is explicitly fought.

Knowledge is the way 'truth' becomes powerful, and these insights inform sociological and anthropological explorations into 'Battlefields of Knowledge' (Long and Long 1992; Peters 2000). The dematerialisation involved in a simple understanding of knowledge has, correctly, come in for criticism (Goss 1996). But by inflecting discursive analysis with a commitment to materialism, the benefits of which were, incidentally, best illustrated with respect to South Africa (Hall 1996), important scholarship is possible. The problematising of knowledge about land has, to some extent, already been advanced, particularly by Leach and Mearns (1996). Their work runs counter to official narratives of African incompetence in land management, demonstrating that colonial authorities had accused their subjects of deforestation when historical photographic evidence showed quite the opposite. More recent work on the use of knowledge in Africa (Briggs and Sharp 2004) focuses more explicitly on the international processes of authorisation that legitimise or delegitimise knowledge, subaltern and otherwise (Pithouse 2003), Eurocentric or Afrocentric (Mafeje 2003). Yet the contests over truth are not only being fought at the international level. National-level discourses, especially those that invoke land as a symbol for citizenship, are used in the production of state-level and state-authored discourses of community. Benedict Anderson argues this forcefully in his 'Imagined Communities', pointing, crucially, to the link between the spread of 'print capitalism' – and the importance therefore of the creation of shared meaning – but also the fact that print capitalism develops at precisely the time that the 'Enlightenment and Revolution were destroying the legitimacy of the divinely-ordained, hierarchical dynastic realm' (Anderson 1983:6-7). The new arbiter of territory would no longer be the king – it would be the state. And it would govern not by divine right, but through jurisdiction.

At the heart of the discussion of any land question, the highest term in jurisdiction, the concept that has been most stabilised, most normalised, most subjected to the operation of power that has transformed a once unique and viciously imposed institution into an ordinary fact of every day life, is 'ownership'. Marx offers some theoretical guidelines in understanding ownership in his discussion in the *Economic Manuscripts of 1861-63*. In the discussion of surplus value, and of the labourer, Marx discusses the foundational and common moment. In Marx's later texts, the phrase becomes not 'ownership of', but 'relation to' the means of production (see, e.g. (Marx, Fowkes and Fernbach 1977: vI, ch.11), following Marx's own unfurling of the concept. But his work here considers the normalisation of how 'ownership' and its corollary, 'sale', are integral to modern capitalism.

But he owes his ability to appropriate *for himself* the whole product of his own labour, whereby the excess of the value of his product over the average price **for instance** of his day's labour is not appropriated by a third **master**, not to his labour — which does not distinguish him from other workers — but to his ownership of the means of production. It is therefore only through ownership of the latter that he obtains control of his own surplus labour, and thus he relates to himself as wage labourer as his own capitalist. The *separation* of the two appears as the normal relation in this society. Therefore where it does not take place in practice it is assumed, and, as we have just shown, **so far** correctly; for (unlike, for example, the conditions of ancient Rome or Norway) (or American conditions in the North West of the **United States**) the *unification* of the two appears here as accidental, their *separation* as normal, and therefore the separation is retained as the relation, even when one person unites the different functions.²

If we understand the institutions through which ownership is rendered normal, we stand a good chance of revisiting some of the pre-thought thinking integral in the land question. Ownership is, after all, a socially wrought institution, accompanied by ideas of justice and history. Any examination of the ownership of land necessarily is an investigation of the social relations through which a person or group is able to use or decide how others could use a particular part of the world, and therefore an investigation into the systems through which those relations obtain and become believed. Attempts both to maintain or destabilise those relations draw on a pool of common language, over and through which the right to manufacture truth claims is fought (Long and Long 1992). It should not come as a surprise, then, that among the loci of struggle are powerful mobilizing concepts of nationhood, citizenship and justice. These institutions are part of the apparatus of social sanction and dominion, but they are not so inevitably. To view citizenship, even in its most flayed and simple juridical terms, as merely what is defined by the authors of a given constitution, is to miss the fights over that constitution.³ It is to miss, in other words, the ways in which hegemony is both constructed, and in which it is constantly contested.⁴

As far as the land question is concerned, then, the question deserves fully to encompass the numerous builders of nation and history, and the role that their constructions play in the maintenance or destabilisation of a particular order of property relations. The exploration of the land question needs, I submit, to begin with specifics. We will turn, momentarily, to do exactly that, by exploring the struggles over shack settlements⁵ in Durban, South Africa, looking at how tropes of nationhood, truth, and citizenship are mobilised and manipulated by a range of actors, illuminating the differences between party, state and polity in the process.

But there is a second element in spooling out the land question, and that is the importance of land as a means of production. In rural areas in South Africa, it can be easy to think that amid chronic unemployment and vanishing levels of rural investment, land is a productive resource, a factor which, together with

the right application of labour, will generate goods necessary for reproduction (food, shelter, fuel) and which might also be sold in circuits of petty commodity production. It is the hope of future work to demystify this assumption, as part of a project of asking what if anything differentiates urban and rural militancy around land issues. One way to lay the foundation for that project, however, is to see what the land question might mean when land is not a factor of production in and of itself, but when its social roles are already contentious.⁶

Living Land Questions in Durban's Clare Estate

Figure 10.1: Map of the Clare Estate area in Durban



This is a map of the Clare Estate area in Durban. In the centre of it is the Bisasar Road⁷ dump. The dump was located there by the apartheid-era Durban municipality at the beginning of the 1980s, in the middle of a residential area scheduled as Indian by the apartheid Group Areas Act.⁸ After apartheid ended, the life of the dump was extended by the ANC-controlled municipality, despite objections from residents. Those objections pointed to the range of toxins and effluent that have been illegally dumped there, and that have poisoned the neighbourhood (Bond and Dada 2005).

At its north-east rim, we see the Kennedy Road shack settlement, which has been there for over two decades. It was initially a small group of shacks, but it grew at the end of apartheid, with the rescinding in the 1980s of the Influx Control Laws.⁹ Africans from rural areas who had previously been prohibited from entering Durban were now free to look for work in the city, though they

were invariably too poor to access formal housing. Today, the population of the settlement stands at between six and seven thousand people, who have access to six water pipes and rudimentary sanitation.

The undesirability of the land at the edge of a major solid waste facility, the need for low-cost, low-skill workers in the city, and the municipality's inability to provide formal housing for Africans who were using their newfound freedom of movement to search for work, all meant that the state found it convenient to allow poor people to live in shacks. This general feature, noted recently by *The Economist* (2007), was augmented by a further political consideration – that the residents of the electoral ward in which the shacks were located were not historically members or supporters of the ANC. KwaZulu-Natal was the epicentre of apartheid-state-sponsored organising by the Inkatha Freedom Party, a party which matched the apartheid vision of a state divided through separate racial and national identities. Within Durban, and within the middle-class areas in which shackdweller communities formed, the ANC's concern was with a different party.

The 1999 election yielded a stronger presence of the Democratic Party, a party to the right of the ANC, with a constituency in which white, coloured and Indian voters were represented in higher proportion at most polling stations in Clare Estate.¹⁰ The districts into which poor people had been allowed were districts in which the ANC did substantially better.¹¹ This is not a particularly South African phenomenon – poor people are used as vote banks throughout the world (Fernandes and Heller 2006). The migration to these middle-class areas of large numbers of Africans, who were organised in situ to support the ANC, secured consistently higher returns at the polls for the ruling party. And there it might have remained, with the ANC's hegemony intact, with the Democratic Party struggling to maintain a falling electoral presence, and with shack-dwellers as the faithful and local sirens of the ANC's national majority. But it was not to be.¹² For the people were unhappy.¹³

The positioning of the Bisasar Road dump had always been subject to objection and resistance from local residents (see, Bond and Dada [2005] *passim*). There had, in other words, long been action and activism around land in the area.¹⁴ Among the recent opponents of land use and distribution was Sajida Khan, who had long fought for the closure of the Bisasar Road dump. She had led a group of concerned citizens and activists to reject the continued and illegal dumping of toxic waste near her home. She had also conducted an impromptu survey that found a 'belt' of cancers near the dump, which could be traced to the dump's practice of burning solid waste, and the resultant production of carcinogenic compounds.¹⁵

Khan's ongoing activism saw as its goal both the cessation of polluting activities at the dump, the reimbursement of affected landowners at a fair market

value rate, and the relocation of shack-dwellers to other housing concomitant with the government's own housing plans.¹⁶ Under these plans, shack-dwellers from Kennedy Road were slated to be relocated from there to Verulam, a town a few dozen kilometres away from Clare Estate, which was widely perceived to lack adequate housing facilities, education or healthcare. Most of all, the housing was far from the jobs and economic possibilities that had brought shack-dwellers to Kennedy Road in the first place.

The view that the shack-dwellers are dupes, fooled by the municipal authorities into believing that work and other benefits will be made available to them from the dump, but that shack-dwellers are pawns in a bigger game of which they are unaware, is one shared both by Khan and by a range of other commentators (Bond and Dada 2005). It may, indeed, be the case that shack-dwellers are manipulated – indeed, the argument in this chapter so far has been that, as a population in vote banks, they have been used by the ANC. But, and this is a crucial distinction, shack-dwellers have become increasingly aware of the complex interplay of class, race, nation and political affiliation. The ANC did, after all, bring social spending directed specifically at poor black people, through child grants and pensions. They also brought, at least at the outset, a non-ethnic vision of nationhood – the Inkatha Freedom Party, after all, did not. The ANC offered material and ideological goods that were important in the impoverished and multi-ethnic shack settlements, and were understood as such. There was a great deal of thinking, negotiating and compromise happening within the shacks. While Khan and other residents with formal housing and water are happy to consign shack-dwellers to distant areas like Marx's 'sacks of potatoes',¹⁷ under the municipality's plans, shack-dwellers themselves have formed their own sophisticated views of the opinions held about them across the class divide.

In the words of Mnikelo Ndabankulu, a shackdweller from nearby Foreman Road:

'(Mayor Obed) Mlaba wants to relocate us to Verulam. Why? Because of property prices. I thought the government slogan was Batho Pele (People First) and not property prices,' he said. He points to an empty plot of land adjacent to the settlement, 'They promised to build us housing on that side ... we don't want to move to Verulam, we like it here in [electoral] ward 25.' (Langanparsad 2006)

Articulating the fetishisation of land, nationhood, party and citizenship, Ndabankulu conjures the memories of the anti-apartheid struggle, the promises it brought, the slogans generated within it, and the disappointments in the wake of 1994. It is an analysis that demonstrates that shack-dwellers need not have been cast as hapless and ignorant dupes, and it is a reminder that some civil society analysis, while offering progressive politics, can in its agnosticism around class, fall to forces of reaction.¹⁸ Ndabankulu's words warrant further analysis in this regard, and we will return to them below; but to be able to do it justice, some

clarification and exegesis on the pro-active character of shackdweller analysis and organising is necessary. The final detail in Figure 1 above is an area of land less than a hectare in size. It is the land that Ndabankulu was pointing to in the above quotation. It is known to all as 'the promised land', a moniker it earned as a result of its being promised, repeatedly over the course of a decade, to the residents of the Kennedy Road shack settlement.

Through the promising, the land achieved somewhat mythic status, an embodiment of the post-apartheid dividend that was temporarily in limbo, but which when disbursed to the shack residents, would augur the beginning of the end of their poverty. It was with great hope, then, that in March 2005, residents of the shacks welcomed the arrival of bulldozers onto the Promised Land. And with profound disillusion when they learned that the local ANC councillor had given the land not to the residents, but to a local brick company. The residents organized a protest later that weekend, which involved their burning tyres on a major arterial road at the bottom of their settlement. The police intervened, arresting fourteen people at random, including legal minors, and detaining them under charges of public violence (Patel and Pithouse 2005).

The confrontation between the state and the shack-dwellers escalated. Legal protests were organised to demand both clarity and action from the ANC representatives who had previously relied on the shack-dwellers as a repository of votes and good faith. First, a protest was launched against the incumbent Councillor, Yakoob Baig, a career politician who had switched his allegiance from the National Party to the Democratic Party to the ANC over the course of his career. When Baig failed to respond to demands, shack-dwellers escalated their protests to the municipal level, demanding that Mayor Obed Mlaba, and city manager Mike Sutcliffe, respond to questions and issues relating to housing. One such protest was illegally broken by the local Sydenham police force.¹⁹ A subsequent protest against Mike Mabuyakhulu, KwaZulu-Natal's Provincial Minister of Local Government Housing and Traditional Affairs, was banned, illegally, by the municipality. The shack-dwellers obtained a high court injunction to proceed with their march.

The protests took place against the year-long run up to the 2006 Municipal Elections, which were held on 1 March. Throughout the escalating process, and increasingly at the marches, it became clear to the shack-dwellers that their role in the state's plan was as patient recipients of development, rather than active participants in its conception. Despite the state's rhetoric of participatory development, the kind of participation involved reflected more a *dirigiste* vision. Reflecting on this five years earlier, Heller (2001) observed the trend:

The ANC's drift toward centralized control and technocratic domination can only be explained by the demobilization of popular sectors and the state's disengagement from civil society (Heller 2001:158).

Many shack-dwellers experienced this demobilisation as symptomatic of a broader betrayal. The arts of citizenship, engagement, debate and iconoclasm learned and practiced under the anti-apartheid struggles were systematically denigrated by the government. Instead, the state extolled the virtues of patience, and of faith in authority. While some residents of formal housing next to the dump shared with shack-dwellers a disdain for the state, both the state and some middle-class residents seem to have shared a view of the poor as needing to do what they were told.

The dialectics of betrayal and disappointment, of protest and counter-manoeuve, spawned (not inevitably, but contingently) a network of social organisation, through which shack-dwellers in different settlements, at weekly meetings, came to unite under the name of 'Abahlali baseMjondolo' – Zulu for 'those who stay in shacks'. In response to the systematic deskilling, and the frequent use of knowledge in authority against them, the shack-dwellers organised into a broad social movement, some members of the movement described it as 'the University of Abahlali baseMjondolo' (Pithouse 2006a; Patel 2006). Shack-dwellers came quickly to the realization that a great deal of their potential power lay precisely in their role as 'votebanks', as deliverers of the ANC's mandate to rule on behalf of a racial and poor majority. The upcoming election offered a moment of 'political opportunity'.²⁰

No Land, No House, No Vote



The slogan 'No Land, No House, No Vote' is one that was circulated widely within the shack communities. The slogan was an inspired piece of political propaganda, forged in widespread meetings across different settlements (at which the possibility of fielding their own candidate was discussed and then decided

against). The slogan linked the popular mandate with a re-articulated question of land as a means to a place in the city. It resisted gentrification (Smith 2002), demanding instead a right to live, move, work and play in Durban. It was a call to which the ANC reacted badly.

The rupture of the shack-dwellers with the ANC happened at the same time that the party came under increasing attack for its failure to address growing inequality, and a widespread feeling that it had betrayed the poor. Although shack-dwellers in Durban had organised into South Africa's largest social movement independent of the state, the discontent to which it gave voice was being manifested nationwide. In 2005, over 6000 demonstrations, legal and illegal, were organised in South Africa.²² In a bid to downplay them, the state referred to them as 'spontaneous service delivery protests' (*Cape Argus* 2005). In fact, the protests were rarely spontaneous, nor were they about service delivery (as we see in the case of the Kennedy Road protests, which were the culmination of over a decade of promise and betrayal). The description itself, however, painted the participants in the protest as unthinking, and of the government's failure as singularly a failure to provide, rather than as the broader demobilisation and deskilling of its citizens.

These rhetorical moves were augmented by two further manoeuvres which Foucault might have predicted in advance – the denomination of its critics as insane or criminal (Foucault 1979; 1988). One public spat in 2004 between President Thabo Mbeki and Desmond Tutu, ended with the Archbishop thanking Mbeki 'for telling me what you think of me. That I am a liar with scant regard for the truth and a charlatan posing with his concern for the poor, the hungry, the oppressed and the voiceless.'²³ Such attempts at delegitimisation were the stock-in-trade of the apartheid regime, and it is ironic that it was Helen Zille, of the Democratic Alliance and mayor of Cape Town, who observed that 'It is a very poor reflection on the post-apartheid government that it is using exactly the same tactics in an attempt to silence him' (SAPA 2004).

Mbeki himself was at pains to address the discontent of poor people around his government's performance. In a speech in mid 2005, he appealed to the public saying, 'We must stop this business of people going into the street to demonstrate about lack of delivery. These are the things that the youth used to do in the struggle against apartheid' (Mbeki 2005). The logic here, just to be clear, is that with the end of apartheid comes also the end of possibilities that the government's behaviour is anything but legitimate, and therefore beyond reproach. Further ANC communications made it clear that any debate was a matter internal to the party.²⁴ And, as Foucault might also have predicted, those who sought to indict the state's forces of development were attempting to indict the ANC, and therefore to indict the anti-apartheid struggle – an indictment that could and would be seen as contrary not only to good sense, but to the law. It was, therefore, an extension of the discourse of unreason that 'service delivery protesters' were seen as criminals.²⁵

Attempts to criminalise the poor are, however, difficult to maintain when the numbers involved become quite as large as those involved in the Abahlali baseMjondolo movement (which today has over 30,000 members). When the official narrative of power has been unsuccessful in casting the majority of shack-dwellers as wolves, it has tried to portray them as sheep. Responsibility for their deviant behaviour has been placed almost everywhere but at the door of the poor themselves. Academics working with the poor have been accused of stirring up trouble – a repeat of the Third Force discourse under apartheid.²⁶ It is a response that was heard, appropriated and turned around in a widely circulated article by the elected head of the Abahlali baseMjondolo, S’bu Zikode, in a piece entitled “I am the Third Force”, in which Zikode was able to flip the issue of power and representation on its head:

‘We need to get things clear. There definitely is a Third Force. The question is what is it and who is part of the Third Force? Well, I am Third Force myself. The Third Force is all the pain and the suffering that the poor are subjected to every second in our lives. The shack dwellers have many things to say about the Third Force. It is time for us to speak out and to say this is who we are, this is where we are and this how we live. The life that we are living makes our communities the Third Force. Most of us are not working and have to spend all day struggling for small money. AIDS is worse in the shack settlements than anywhere else. Without proper houses, water, electricity, refuse removal and toilets all kinds of diseases breed. The causes are clearly visible and every Dick, Tom and Harry can understand. Our bodies itch every day because of the insects. If it is raining everything is wet - blankets and floors. If it is hot the mosquitoes and flies are always there. There is no holiday in the shacks. When the evening comes - it is always a challenge. The night is supposed to be for relaxing and getting rest. But it doesn’t happen like that in the jondolos. People stay awake worrying about their lives. You must see how big the rats are that will run across the small babies in the night. You must see how people have to sleep under the bridges when it rains because their floors are so wet. The rain comes right inside people’s houses. Some people just stand up all night.’ (Zikode 2005)

The municipal authority met the counter-position of shack-dwellers with its own moves, attempting to secure hegemony through fracturing class-based organising with morsels of patronage, and promises for the future. As the elections drew closer, it promised key organisers in the shacks that in exchange for guaranteeing ANC votes, the municipality would re-house them. The municipality also announced, prematurely it turns out,²⁷ that it was about to house between 15,000 and 20,000 families in a R10 billion development.²⁸ All that the municipality asked from the shack-dwellers was a little patience, and that they refrain from embarrassing the government further by talking to the media. It was a request that was met with the response that ‘Democracy is not about us being loyal to Nkosi [traditional lord]. Democracy is about Nkosi being loyal to the citizens of this province.’²⁹

In the political back-and-forth, between the shackdwellers, the local middle class, the municipality and the government each had their own dimension, each with their own mobilisation of concerns around land, and around the claims that would stabilise ‘ownership’ of that land as an uncontested fact. At many protests, the South African flag has been a constant feature, linking the demands of the protest directly to claims on the nation, and the state. At the protest on 27 March 2006, the protest’s memorandum began with the words:

‘We the shack-dwellers of Durban, democrats and loyal citizens of the Republic of South Africa, note that this country is rich because of the theft of our land and because of our work in the farms, mines, factories, kitchens and laundries of the rich. We can not and will not continue to suffer the way that we do.’³⁰

The appeal to citizenship, and to loyalty, is also a feature of demands from other protests.³¹ Precisely because processes of accumulation are underway, there’s tension. When Mnikelo Ndabankulu talks of house prices trumping people, he presents an important analysis. His reference to house-prices trumping people points directly to an insight about the transformation of the state in its local government forms, as an agent of the bourgeoisie. And it is house prices, not housing, that Ndabankulu points to – the prices being the normalised institution of ‘ownership’, rather than the politically charged notion of ‘people’ that is summoned by citizenship. This range of tensions over land might be summarised in Table 10.1.

Table 10.1: Constituencies and Concepts Mobilised Around Land in Kennedy Road

Constituency	Land Value	Ways value might be increased	‘Ownership’ stabilised by claims to...
Local councillor	Source of patronage (alleged)	Trouble-free disposal of land to local business	Position as ‘elected official’
Shackdweller community	Means to access jobs, healthcare, education facilities Source of food (for a handful of families)	Security of tenure	Occupation, moral claim, political mobilisation, citizenship
Local house-dwellers	Store of value Access to jobs, healthcare, education, facilities	Removal of shack-dwellers (perceived reduced crime and increased house valuation)	harm already suffered by dump, history of occupation of land
Property developers	Possibility of redevelopment	Removal of shackdwellers	Promise of ‘black economic empowerment’
Municipality	Sink for municipal refuse		Greater public good

Party	Vote bank (2000)	Site of trouble-markets – remove key organisers	Heritage of anti-apartheid struggle, guardians of nation-hood, democracy and development
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It was under these conditions that the 2006 municipal elections were held, with the shack-dwellers pushing for a 'no land no house no vote' position, with local home owners concerned about the value of their property, and with the government taking an increasingly and publicly hard line against the shack-dwellers on whom they had relied for a vote. The meaning of the election was, at least as far as the government was concerned, a referendum on its post-apartheid policies, and an opportunity for citizens to participate in a process that would re-confer a mandate for its hegemony.

When the ANC won, it claimed precisely this vindication. As Thabo Mbeki put it:

'Once more the masses of our people have confirmed their confidence in our movement as the leading representative and repository of their hopes and aspirations. For our movement and indeed for all democrats, the days ahead of us must and will be days of celebration.

'There are many things that we must celebrate. We must celebrate the fact that we have further entrenched our position as the largest political formation in our country, freely chosen by our people as the leading party of government in all three spheres of government. We must celebrate the fact that the masses of our people continue to support the ANC perspective of progressive social transformation, and unreservedly acknowledge the positive changes we have brought about since 1994.'³²

A closer scrutiny of the election data suggests that while the ANC may have increased its majority, not least in Durban's electoral wards (23 and 25) in which shack-dwellers organised, something else was afoot.

Ward 23

Party Name	2000		2006		% change
	Votes	%	Votes	%	
Independent	656	15.0	41	1.0	-14.0
Democratic alliance	1007	23.0	639	15.6	-7.4
National united people's organisation	36	0.8	16	0.4	-0.4
Pan Africanist Congress of Azania	15	0.3	5	0.1	-0.2
Vryheidsfront Plus			1	0.0	0.0
eThekwin Ecopeace	4	0.1	11	0.3	0.2

National Democratic Convention			10	0.2	0.2
United Democratic Movement			12	0.3	0.3
Scara Civic Party			14	0.3	0.3
Truly Alliance			45	1.1	1.1
African Christian Democratic Party			66	1.6	1.6
African National Congress	2024	46.3	1992	48.5	2.3
Inkatha Freedom Party	217	5.0	386	9.4	4.4
Minority Front	416	9.5	866	21.1	11.6
Total Valid Votes	4375	100	4104	100	
Registered Voters	13124		13297		
% Poll	33.4		30.9		-2.5

Ward 25

Party Name	2000		2006		
	Votes	%	Votes	%	
Democratic alliance	2043	39.2	1194	21.9	-17.3
eThekweni Ecopeace	27	0.5	28	0.5	0.0
Scara Civic Party			11	0.2	0.2
Vryheidsfront Plus			12	0.2	0.2
Azanian Peoples Organisation			15	0.3	0.3
National United People’s Organisation			23	0.4	0.4
United Democratic Movement			28	0.5	0.5
Inkatha Freedom Party	266	5.1	373	6.8	1.7
Minority Front	372	7.1	484	8.9	1.7
Independent Democrat			104	1.9	1.9
African Christian Democratic Party	219	4.2	342	6.3	2.1
Truly Alliance			144	2.6	2.6
African National Congress	2292	43.9	2706	49.5	5.6
Total Valid Votes	5219	100	5464	100	
Registered Voters	14314		15919		
% Poll		36.5		34.3	-2.2

The two features to note in the election results are, first, a reduced turnout and second, more revealing, a defection away from the Democratic Alliance greater than the increase of the ANC's vote. Indeed, had it not been for the shifting profile of the ANC's vote, it would have lost these two electoral wards. In the end, the African National Congress won because of the votes of those who were not, under apartheid, considered African. Instead, the Democratic Alliance, a party that has a right-of-centre agenda which appeals, in large part, to a middle-class constituency, saw its faithful voters draining into the ANC as the ANC marked out its willingness to cater to a new middle class, in the name of catering (as Mbeki fulsomely claimed) to every citizen.

I am keen here to place the election not as a result, but as a further moment in the ongoing battle for hegemony. The election itself was part of the cut and thrust, of the war of manoeuvre, as Gramsci would put it, in which the understanding of terms like 'democracy', 'citizenship', and 'nationhood' inflect questions of land. Mbeki's claim to be acting for all is somewhat belied by the ballot data, and by the party and police actions which specifically targeted poor and 'badly behaved' Africans living in the city, badly behaved because they dare to claim their rights before the ANC is ready to deliver them, years after they had been promised. Through these actions, the party and state displayed a particular, and important, attitude to shackdwellers, and their citizenship.

Citizens without Citizenship

Giorgio Agamben offers an incisive analysis of citizenship. In his 'Against Human Rights', he analyses Hannah Arendt's (1943) essay 'We Refugees', in which an assimilated Jew who 'after having been 150 percent German, 150 percent Viennese, 150 percent French' is stripped of all these identities. Agamben sees the refugee as the 'only thinkable figure for the people of our time and the only category in which one may see today – at least until the process of dissolution of the nation-state and its sovereignty has achieved full completion – the forms and limits of a coming political community.' He justifies this by reminding us that

One of the few rules the Nazis constantly obeyed throughout the course of the 'final solution' was that Jews and Gypsies could be sent to extermination camps only after having been fully denationalized (that is, after they had been stripped of even that second-class citizenship to which they had been relegated after the Nuremberg Laws). When their rights are no longer the rights of the citizen, that is when human beings are truly sacred, in the sense that this term used to have in the Roman law of the archaic period: doomed to death (Agamben 2003:8)

Refugee camps can be thought of as cities without citizens. What we see in the blossoming shackdweller population in Durban³³ is a variation on this theme. Communities within the city whose residents provide cheap labour for the middle classes, and who reproduce their own labour in the city, but who can never be

embraced as permanent members of that city in the places where they currently reside, those communities are formed of citizens without citizenship. The call of the shack-dwellers is that they are 100 per cent South African. The state is, nonetheless, unwilling to accommodate their demands, consonant though they might be with the letter of the constitution, with the documentation of the state.

This points to an important difference between the resistance organised by Sajida Khan and other middle class residents, and that of the shackdwellers. In the case of the former, citizenship rights are assumed, and their attempts to remove the dump from the city, and remove themselves from the vicinity of the dump, proceed on the basis of their assumption of citizenship. The rights of housed families affected by solid waste pollution are legible to the state, and acceptable to it. Notwithstanding the fact that the government has shown itself unwilling to accommodate them, Khan and her fellow residents do not live in fear of arrest. In the case of shackdwellers, whom both Khan and the state homogenise, organising has time and again reasserted not merely their demands, but their right to have those demands heard. They have claimed equality as humans, as South African, as families. They have needed to do this in order simply to claim the right to exist in the city. The language of citizenship is one that the state should, at least in principle, be able to hear – which is why it is claimed so forcefully. And it is why the state has reacted so forcefully in return, particularly around the shackdwellers' refusal to vote.

Alain Badiou argues that it is worthwhile to subject voting, and democracy as it is currently construed, to close scrutiny. In so doing, he offers an explanation of the state's behaviour:

Today the word 'democracy' is the principal organiser of consensus. It is a word that supposedly unites the collapse of the socialist States, the putative well-being enjoyed in our countries and the humanitarian crusades of the West. In fact, the word 'democracy' concerns what I shall call authoritarian opinion. It is forbidden, as it were, not to be a democrat. More precisely, it stands to reason that humanity aspires to democracy, and any subjectivity suspected of not being democratic is regarded as pathological. At best it refers to a patient re-education, at worst to the right of military intervention by democratic paratroopers.

Thus democracy necessarily elicits the philosopher's critical suspicion precisely insofar as it falls within the realm of public opinion and consensus. Since Plato, philosophy has stood for a rupture with opinion, and is meant to examine everything that is spontaneously considered as normal. If 'democracy' names a supposedly normal state of collective organisation or political will, then the philosopher demands that we examine the norm of this normality (Badiou 2005b:78).

This, incidentally, implies a restatement of the theory developed by Andreasson (2003)³⁴ of 'virtual democracy'. Andreasson cites Joseph as defining virtual democracy as 'having a formal basis in citizen rule but with key decision-making insulated from popular involvement and oversight'. While this is certainly going on in the case above, the idea of virtual democracy does not explain how the necessity of the formal citizen-based rule also aligns with the actual shifts in demands of the electorate. The ballot becomes at once the most disposable part of democracy, and the most vital symbol of acceptable tyranny. To put it another way, elections are more than simply window dressing on authoritarianism. They are a way of conscripting citizens to the authoritarian project, a way of creating class-based ownership of the rituals of democratic tyranny, and of legitimising the exclusion of mass participation because the only opinions that matter have already been heard. And this process happens through the resistance to it. It would be hard to imagine that the ANC would have scored quite as substantial a draw from the Democratic Alliance had they not been so visibly and anxiously aligned in their economic policies with the interests of the middle classes they successfully drew to their side. And this would not have been made quite so manifest had there not been a year of long and visible confrontations with Durban's poorest residents.

One question, in conclusion, remains. Why, after all this, after the recent targeting of members of Kennedy Road in March 2007 which has, at the time of writing, led to five of them going on hunger strike in jail, has the movement never straightforwardly denounced the ANC? As de Souza notes, movement politics in which shack-dwellers can find themselves acting as 'urban planners' involves a suite of positions, 'against, with and despite the state' (de Souza 2006). But there is yet more to this. In some settlements, no party but the ANC is allowed – a break with the party would simply not be tolerated, and some shack residents live in fear of violence for expressing their disappointments with the ANC. Politics are forged with the tools at hand, and shack-dwellers themselves were, in meetings on the subject, divided on the issue of the ANC, and the power of the president. Children wrote letters to Mbeki asking for his attention with pleas of, 'If you don't have the power to build us houses, please give us electricity at least', to analyses of rape, to numerous threats of withholding votes if nothing was done to address the situation, to personal indictments of the president's physique: 'I know that you eat KFC and you have lots of money but you are so fat like a pig.'³⁵ The ANC, however, continues to maintain a powerful historical connection to the anti-apartheid struggle. Although many within the shacks remember that other forces (the communists, Black Consciousness, etc) were involved in the struggle to be free of white minority rule, the ANC has been successful in creating a 'leadership cult'.³⁶ It is one that is deployed subversively – the language of the ANC, referring primarily to the ranks of the middle class, is that 'all races are welcome'. Shack-dwellers have tried to use the discourses of inclusivity to argue that the city should also include them, no matter what their allegiance or ethnicity – for they retain a (tactical) allegiance to the ANC.

Another way of understanding the attachment to the ANC is, however, to understand it as a fidelity to the principles of the anti-apartheid struggle (see (Badiou 2005a). Badiou's notion of fidelity is this: 'To be faithful to an event is to move within the situation that this event has supplemented, but thinking (although all thought is a practice, a putting to the test) the situation *according to the event*' (Badiou 2001:41). The notion here is that the kinds of rupture with experience that produces militants, such as the struggle for freedom from apartheid, demands also that there be a constant positioning (and questioning of that positioning) as a result. Insofar as the ANC contains vestiges of the anti-apartheid event, it commands the fidelity of its militants. But, as it becomes increasingly clear that the party, from top to bottom, has betrayed that event of the struggle against apartheid, the struggle for a deep kind of equality, then a fidelity with the ANC is misplaced – something that the shack-dwellers are finding increasingly true of late. They have found, through their investigation of the land question that they are 'exiled without return', removed not only from the land, but from the possibility of citizenship through the party, and the nation. Land is the stage on which this is carried out, the material condition of possibility. In other words, class struggles about land are *lived* through the dialectic of the material and ideological. Precisely because it is a political experiment that has no safety net, that abjures patronage from the state, it is 'exile without return'.³⁷ This exile, increasingly, points to a politics beyond the party. Because of the bindings of party and state, it could even point towards a politics that bears a closer resemblance to Agamben's refugees.

Through this exile, and (ironically) through the attempt to gain attention and recognition from the state, shack-dwellers are forging new kinds of political community, which 'citizenship' cannot explain, and which relate to territory and place in ways that 'ownership' cannot comprehend. To understand them demands a new kind of land question, one modulated to the politics and moving beyond a land question constituted as an electoral question (and Gill Hart [1991] has offered a way of doing precisely that). It turns out that questions about land, identity, territory, production and reproduction lead us to places far from the well worn paths of 'redistribution, restitution and tenure reform'. Answering these questions would involve yet more ethnographic work – alongside, for example, the Abahlali baseMjondolo's Women's League, as they struggle to find waged work that they can do within the confines of the settlement (Ekine 2007), while simultaneously taking care of the reproductive work that allows the settlement to exist in the first place. Or alongside the Abahlali prison inmates as they go on hunger-strike to protest their illegal detention and arbitrary arrest. But this work can only begin if it can be thought. If their subalternity can be heard (Spivak 1994). And this chapter has attempted to make clear how many barriers have already been erected, before the thinking about land has even started.

Notes

1. The author is grateful for the support given in writing this paper by the University of Abahlali baseMjondolo, Richard Pithouse, Jun Borrás, Dan Moshenberg, Shereen Essof and Philip McMichael. The paper is dedicated to the memory of Archie Mafeje and Cosmos Chaz'muzi Bhengu.
2. <http://www.marxists.org/archive/marx/works/1861/economic/ch38.htm> -
3. In his introductory chapter, Shivji (1975) makes similar remarks on the law.
4. Gramsci (1992) is the *locus classicus* and Hall (1996) provides an important discussion of the South African context, and of the necessity of avoiding economic determinism.
5. A note on terminology: The term 'shack settlement' – a term developed by the area's residents - is used in preference to 'informal settlement' – an appellation developed by the government. Quite reasonably, the residents reject the government's wish that they remain there in an informal capacity. Some have been born in the shacks, and many consider the appellation 'informal' to be pejorative, and to prejudice the possibility that they may be housed in the same place, but with upgraded housing.
6. The introduction of land use for the production of food is bound to modulate the land question, of course – particularly for movements becoming more ecological (Wittman 2005).
7. 29°48'51.76»S, 30°58'52.80»E
8. See Jagarnath (2006), for a definitive history of race relations in nearby Sydenham.
9. As Pithouse and Butler note: "In 1923 the state sought to stem the flow of people into the cities with the policy of Influx Control that aimed to prevent Africans from moving to cities, to force those (mostly men) with permits to inhabit segregated workers' quarters and those without permits to leave. It stayed, in different versions, on the statute books until 1986 and was replaced, in 1990-1, by a "non-racial urban policy framework designed largely by the think-tanks of big business" [2] with the Urban Foundation being the major player." Pithouse, Richard, and Mark Butler (2007).
10. These areas correspond to Independent Electoral Commission districts 433900xx. See www.elections.org.za for more.
11. Compare the Pemary Ridge Primary school polling station results (station 43390054), in an area in which there are relatively low numbers of shackdwellers, and in which the ANC won 30% of the vote to the Democratic Party's 41 per cent, to those of Hillview Primary School (station 43390032), in which the ANC secured 60 per cent of the vote to the Democratic Party's 17 per cent.
12. For a detailed the story (see Pithouse 2005, 2007.) the shackdweller's website, <http://www.abahlali.org>
13. I have written elsewhere of the tensions in Kennedy Road, and the problems of representing them (see Raj Patel. [Forthcoming]. This representation involves a positioning on my part, although the matters of fact remain true.
14. For more, see Lodge (1983) and Maylam and Edwards (1996).
15. The dump is, however, the source of employment for some residents of the Kennedy Road settlement.
16. Which were only fully revealed to shack-dwellers after an application under the

- Promotion of Access to Information Act. The full documents received, which still lack vital details, are available at <http://www.abahlali.org/node/279>
17. Karl.Marx, *The Eighteenth Brumaire of Louis Bonaparte*, New York,: International Publishers, 1964.
 18. See the special issue of Critical Asian Studies, December 2005, for more.
 19. See <http://www.abahlali.org/node/20>
 20. This is Tarrow's not terribly helpful phrase. To say that a political opportunity exists tells little about the precise dynamics, let alone dialectics, through which it becomes important.
 21. This claim acknowledges that while movements like COSATU, the Confederation of South African Trade Unions, has more members, its claim to being independent of the state is null: COSATU is, with the Communist Party, a member of the ANC's tri-partite ruling alliance.
 22. <http://www.fxj.org.za/pages/Legal%20Unit/Gatherings%20Act/Taming%20the%20toy%20toy.html>
 23. Tutu 2004 <http://news.bbc.co.uk/2/hi/africa/4052199.stm>
 24. See ANC today, *passim*.
 25. The criminalisation of poor people has recently reached new heights with a police-sponsored publicity series, recalling the layout of a comic strip, in which local constabulary officials raided shacks, recovered stolen property, hunted 'cop killers', and in which arrested 'suspects. begin their long walk to freedom'. <http://www.sydenhamcpf.org.za/SAPS/SAPSRaid20050729.pdf>
 26. <http://www.abahlali.org/node/182>
 27. Again, this has been discovered by the shack-dwellers only through recourse to the Promotion of Access to Information Act – and the disclosures made by the government have been incomplete and partial at best.
 28. <http://www.themercury.co.za/index.php?fArticleId=3000079>
 29. <http://abahlali.org/node/72>
 30. See <http://www.abahlali.org/node/100>
 31. See, e.g. memoranda for protests on 14 September 2005 and 4 October 2005 at <http://abahlali.org/node/138> and <http://abahlali.org/node/211>
 32. <http://www.anc.org.za/ancdocs/anc today/2006/text/at08.txt>
 33. This is, indeed, a planetary phenomenon, involving over one billion people (Neuwirth 2005).
 34. It is a view endorsed by Davis (2004).
 35. <http://abahlali.org/files/Kennedy%20Road%20brochure.pdf>
 36. It is part of what I have elsewhere termed 'global fascism'. See Patel and McMichael (2004).
 37. Pithouse (2006), citing Hallward (2003).

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Land Tenure Arrangements, Migrant Labour and Land Struggles in Rural Cameroon¹

Francis Menjo Baye and Sunday A. Khan

Introduction

Land tenure can offer one window through which to glimpse the channels in which forces of globalisation are affecting parts of the political, cultural, social and economic lives of people in clearly identifiable ways and how people are acting in response to those changes (Vosburgh 2003). Peasant societies in developing countries consider land to be more than just another factor of production because it is the major determinant of their livelihoods, beliefs and sense of belonging. Land is also the main vehicle for access to economic opportunities, accumulating wealth, and transferring it between generations (World Bank 2003). Land-related assets also provide employment to many and contribute significantly to individual welfare and national income. An important way of responding to the needs of the rural poor, therefore, is to facilitate their access to land-related assets that are essential for their survival and welfare. Conflict situations are generated as land and related assets become scarce. The impacts of conflict on access to and returns on primary assets are typically influenced by economic, social and political processes, and their interactions. These interactions are influenced by forces of globalisation, which are mediated through a wide range of institutions - including land tenure systems.

Land tenure systems integrate two basic elements: land tenure and land administration. Land tenure constitutes a set of rules defining rights of access.

These rules constitute the social endorsement of relationships between people and particular natural resources. Land administration, on the other hand, refers to institutions sanctioning the rules and making them relevant and operational, while factoring in local idiosyncrasies and context-specific elements. The institutional environment that motivates and regulates actions and interactions of economic agents on land matters typically generates two components: (1) a set of incentives, and (2) a set of constraints. It is the implications of these components on conflict situations in a prominent agricultural set-up under globalisation that this chapter attempts to investigate

The dynamics of land holdings in Cameroon, and particularly in the Anglophone provinces today, is driven, at least in part, by the influence of the Cameroon Development Corporation (CDC), with headquarters in Bota-Limbe in the Southwest Province. As the largest agro-industrial complex in the country and the second largest employer after the state, created by the colonial 'masters' to produce crops (rubber, palm oil, bananas, tea etc) on an industrial basis for the metropolis, a lot of labour was needed, which the native population (the Bakweri) could not provide. Labour was, therefore, imported from other parts of the country, notably from the Northwest Province.

The immigrant workers acquired land from the natives, at times free of charge or in exchange with just a token, to cultivate and supplement the low wages paid by the CDC. In the course of time and with increasing demographic pressure, scarcity and value of land, the indigenous people started struggling to reclaim the CDC-exploited plantations and to renegotiate contractual arrangements with the migrant-workers-cum-settlers. Identification and analysis of forces driving these processes is significant in enabling decision-makers to pre-empt actions designed to prevent or quell the reactions of other indigenous ownership claims over similar lands in Cameroon.

The main objective of this chapter is to shed light on how changes in landownership and institutions, which are driven by the colonial heritage and other global forces, have engendered land struggles and disputes in rural Cameroon. The chapter applies a conceptual framework which establishes linkages between globalisation, the institutional environment and land-based conflict situations. Through the presentation of a case study, the chapter identifies the origin and nature of land struggles in a prominent agro-industrial region in rural Cameroon; examines the pattern of migration, labour markets and land holdings in the region; and explores the configuration of land disputes and their effects on incentives to build up assets.

The chapter is in seven sections. This introduction is followed by a section which presents a conceptual framework of institutional mediation that links external factors, institutions, social movements and asset holdings to conflict formation and management. Section three is a review of some of the relevant

literature. This provides the background for section four, which discusses the genesis and nature of struggles related to the Bakweri land problem. Section five presents the methodology and case study villages for the primary research on which this chapter is based, while section six reports on the findings of case studies. Section seven provides the summary and concluding remarks.

Land-Tenure Institutions and Conflicts in a Globalising World: A Conceptual Framework

Global Forces and Land-based Conflicts

The conceptual framework adopted in this chapter focuses on the role of institutions in mediating conflict situations and potential implications for access and returns on primary asset endowments in a globalising environment. The traditional attitude of Africans towards land was beautifully phrased by a Nigerian Chief to the West African Lands Committee of 1912: 'Land belongs to a vast family, of which many are dead, a few are living, and countless members are still unborn' (Peterson 1986).² This customary interpretation has been undergoing transformation since colonial times. Trading directly or indirectly with western nations had the effect of changing the value of commodities and thus the pattern of land use. Even more compelling, however, is the subtlety with which market forces in particular affect landtenure, even when it remains under customary arrangements.

With the growing dominance of capitalism and democracy as global operating standards (Huntington 1991), the concept of private property lies at the heart of political and economic assumptions (Riker and Weimer 1995). Property rights and tenure regimes based on collective notions of ownership and control have, therefore, been waning with increasing commercialisation and have notably come under attack in an environment of all-round liberalisation integral to the IMF/World Bank structural adjustment programmes systematically administered across Africa (Moyo 2003). Land titling as an individualising process that supposedly allows for easier access to agricultural credit and the expansion of land markets has been favoured as the preferred policy direction for Africa by the neo-liberals.

The various processes of commoditisation since the colonial period have generated growing conflicts over land allocation and use across many social and material cleavages, particularly the more generic dimensions of class, gender, nationality, ethnicity, and race (Moyo 2003). One of the common sources of today's land-related crises in Africa is globalisation – dating from colonial times. Arguably, social justice and economic inequality have always been influenced by global politics and economics, as championed by neo-liberal reformers who are selling state-owned businesses, which nationalistic rhetoric equates with 'ransoming the patrimony' (Berardo 1998).

Both nationalists and neo-liberals would probably agree that secure land-tenure is important for sustainable agricultural practices, which entail investment in intensive and longer-term land-use strategies requiring capital inputs, seeds, fertilizers and labour. Yet, the neo-liberal solution – land registration, titling and commoditisation, which is required for small farmers to qualify for commercial or public sector credit programmes to enable them respond appropriately, is vehemently opposed by nationalists. Proponents of traditional land systems are opposing these western reforms and arguing on the basis of the cultural and social importance of land. Indeed, as argued in Vosburgh (2003), land is not just a commodity but is also a cultural artefact, embedded within the social arrangements of many peoples and an intrinsic part of many belief systems.

In a nutshell, questions about property entitlements form a complex set of related issues, which, when examined closely, reveal different interests and arguments: economic, political, humanitarian, ethical, religious, legal, social and cultural. The processes of globalisation generate signals that play an important role in issues surrounding tenure and property rights. These signals are, however, mediated through national institutions.

Land Tenure Institutions and the Accumulation of Assets

According to North (1990), institutions are the humanly devised constraints that shape human interaction. By defining and limiting the set of choices of individuals, institutions structure incentives in human exchange in the political, social and economic domains. Institutions can be: (1) formal rules, regulations and enforcement, or (2) informal constraints, which define conventions, codes of conduct and norms of behaviour that are culture-specific.

Land tenure systems are the outcome of economic, social and political processes, and their interactions. These interactions are mediated through a wide range of both formal and informal institutions, including land tenure arrangements. While the law governing the control and use of land in Cameroon is defined formally by an act of parliament and promulgated to law by the President of the Republic in a judicial sense, how the rights over the use of land and related assets, as well as over the returns on them are determined and interpreted in practice, depends largely on the socio-economic implementation context, including informal societal conventions (Baye 2003). In this regard, both formal and informal institutions tend to affect and determine, by interacting with each other, levels of security of access and returns on primary assets.

To render the framework for understanding the dynamics of asset accumulation more tractable, we follow Nissanke (2000) to classify assets into two main categories – primary assets and secondary assets. Primary assets can be sub-divided into four groups, which include: (1) natural assets (land, pastures, forests, fisheries, water etc); (2) human assets (household composition and size,

health and nutritional status, education and skills); (3) physical assets (productive and household assets, livestock and food stocks); and (4) financial assets (cash, savings, access to credit and insurance markets). Secondary assets constitute the institutional environment that affects and determines the outcome of conflict situations. The secondary assets implied by this framework of analysis could include those governing: (1) property right regimes, land tenure relations, access and use-rights to productive assets and other natural resource management; (2) production relations; (3) marketing arrangements; (4) gender relations; (5) labour market arrangements (on-farm and non-farm wage employment opportunities and rural-urban or rural-rural migration/resource/remittance transfers); (6) financial market arrangements; (7) provision of social services, and (8) social networks and safety-nets (Nissanke 2004). The institutional environment is, therefore, composed of all market and non-market formal and informal arrangements. Changes in the institutional environment may act as a constraint on primary asset accumulation and their returns by perpetuating insecurity in land tenure. For instance, institutions that promote discrimination by ethnicity, gender and religion, may engender social and spatial fragmentation and create conflict situations in rural areas. On the other hand, if the socio-economic and political governance structures of these institutions are flexible and favourable, the poor can have a much better opportunity of preventing or coming out of conflict situations and building up primary assets over time.

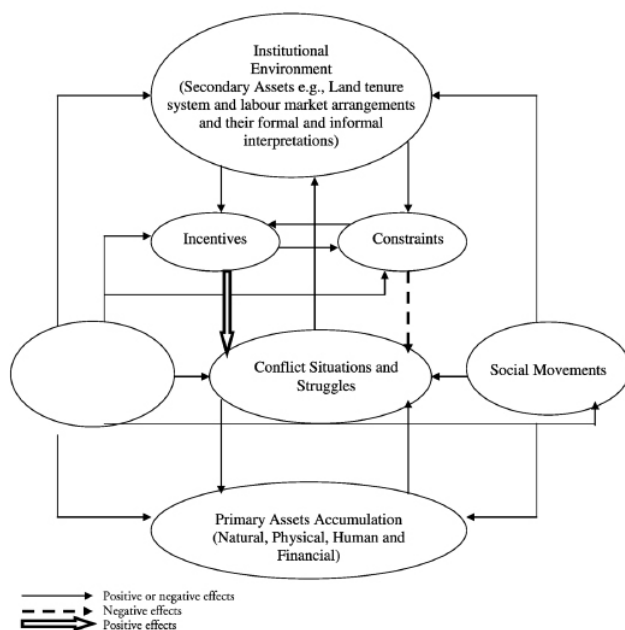
Global Forces, Land Tenure Arrangements and Conflict Management Linkages

This framework of institutions, assets and conflict management recognises that individuals interact with each other not just through markets, but through a wide range of institutional arrangements that include markets, whose main facets can be changed by both internal and external forces. Consequently, the framework considers land-related conflicts and their management not just as a function of local realities, but also a function of the institutional environment that mediates other exogenous factors propelled by the forces of globalisation spanning from the colonial era.

Figure 11.1 below proposes a simple model that attempts to capture linkages between land tenure systems, social movements, conflicts and asset acquisition in a globalising environment. Internal and external factors influence the institutional environment, which acts as a filter and generates a series of incentives and/or constraints that impact on conflict situations which affect primary asset holdings. The incentives reduce land-based conflicts, while the constraints usher in conditions that fuel disputes over landed property. Conflict situations in the rural economy can also transmit signals that may influence changes in the institutional environment. These signals may be transmitted via social movements, which may

be having alliances with external social forces. These movements tend to push forward struggles by indigenous people over land and related assets. Exogenous factors could also influence these incentives and constraints directly, intensifying them or mitigating their influence on conflict situations.

Figure 11.1: Global Forces, Institutions and Conflict Management Linkages



Review of some relevant Literature on Land tenure Arrangements in Africa

Conflicts and Struggles over Land

Competition over land is ubiquitous at all socio-economic levels and across regions in Cameroon. Typically, neighbours and kinsmen encroach on one another's fields, or argue fiercely over inheritance and claims of absentees; farmers and herders are constantly encroaching on each other's fields; and customary rules long honoured in the breach are being revived and reinterpreted to exclude descendants of non-natives from land they had occupied for many decades.

Outside of freehold, access to land in Africa varies between men and women in some regions. This discriminatory role of customary tenure along social and gender lines is a direct product of colonial manipulation (Shivji 1998; Moyo 2003), given the imposition of taxes and the cultivation of perennial export commodities on men. As observed by Moyo (2003), the concept of citizenship is differentiated along ethnic, lineage, gender, and age lines in customary societies and the colonial taxation systems conferred citizenship on male adults through taxes, thus reinforcing their land rights.

Although many African land tenure systems are characterised by egalitarian land access within any given group, the relative endowments of different groups, as defined on the basis of ethnicity or gender, can cause sharp differentiation in the control of land. If land value increases in an environment where access to land across groups is highly unequal or governed by factors such as ethnicity, it can give rise to conflicts that run along ethnic lines and spread to areas completely unrelated to land. For instance, in cases where descendants of migrants can be easily identified as 'outsiders', increased land value provides a strong incentive for 'locals' to renege on earlier sales contracts (Klaus and Castagnini 2004).

In the case of Cote d'Ivoire, land access is interlinked with questions of nationality and the ability of only nationals to own land, which can give rise to conflicts that extend far beyond the area of land (Lavigne-Delville et al 2002). In Rwanda, where extreme land scarcity coincided with accumulation of land by individuals with access to non-agricultural incomes, land conflict was among the principal causes of the 1994 civil war (Andre and Platteau 1998). Similar tensions and clan- or ethnically-based conflicts with devastating consequences for those involved, who are often the poorest of the poor, tend to arise at the boundary between herders and sedentary agriculturalists (van den Brink et al 1995; Ngaido and McCarthy 2002).

The institutional framework for land administration in most of Africa is exceedingly complex and fractured (Shivji 1998; Palmer 2002). There are numerous competing agencies involved in land administration, notably line government ministries, large semi-state corporations, and local government and traditional authorities (Moyo 1995). The way these different agencies are involved in different aspects of land administration in different land tenure areas tends to overlap and generate confusion and conflict amongst the various stakeholders, thus creating difficulties in obtaining an integrated and comprehensive approach to land administration (Shivji 1998). This augments transaction costs associated with dispute settlement.

The expropriation of land for commercial agriculture was carried out by the colonial administration, and the post-colonial state took over. In the name of development and national interest, the state further allocated land to state projects and private commercial interests (Moyo 1995, 2003; Amanor 2003). When this expropriation is opposed by the rural people, the legal channels open for them to redress their concerns are limited, since the state has created the legal framework through which it initiates the process of expropriation. As pointed out in Amanor (2003) and Murombedzi (1991), this is usually carried out with the complicity of some chiefs, elders, and others in leadership positions at the local level. These persons generally put their interests before those of the entire village.

Land-Tenure Arrangements in Cameroon

The land tenure and resource access system in Cameroon is dynamic, and is the outcome, in part, of the chequered history of the country. The geographical location now identified as Cameroon has gone through different periods and experiences, beginning as migratory tribal groups in search of appropriate places for settlement, through a colonial period that saw Germany, Britain and France as colonising powers that left traces of their systems of tenure and resource access on the territory. To better understand the present land tenure system, it is necessary to begin with the period when it was established (Baye et al 2002). Under the German Natural Resource Tenure System, all lands, except that occupied by the 'natives' for farms and residence, were expropriated without compensation.

The French administration (of French-speaking Cameroon) and the British administration (of English-speaking Cameroon) took over from the Germans. Under the French administration, a land registration and certification system was introduced. Individuals could obtain titles to land, which gave them rights to exploit timber and other forest products within limited forest areas. The British tenure system recognised native laws and customs with regard to the use and occupation of land. They paid royalties to chiefs for harvesting trees and non-timber forest products (NTFP) on native lands. The British administration also recognised the need for non-natives to occupy land, and so issued certificates of occupancy. Three successive laws have been enacted in Cameroon since independence. These laws draw inspiration from the colonial administrations.

The pieces of land tenure legislation passed in 1974, 1976 and 1994 abolished the traditional land tenure systems and prescribed formal land and resource use procedures, which eventually tilted to individual ownership under some form of freehold upon obtaining a land title from the state. The Cameroonian authorities viewed these ordinances as land reform intended to protect small farmers, assure them a permanency of tenure, and encourage development in rural areas. The freehold tenure implied by this reform is based on exclusive rights (to sell, sub-divide, lease, make a gift or bequest), whereas the traditional system is founded on the right of access as a member of the community.

A number of factors led to an increasing amount of land coming under permanent individual control. These include the introduction of perennial cash crops such as coffee and cocoa; the necessity for investment in land improvement and for safeguards in occupation and use; population growth, urbanisation and the growing recognition that land had commercial value (Baye 1987). These aspects combined to sharpen the need for clear definition of individual rights and responsibilities under safeguards and sanctions. The national land ordinances give the government 'de jure' rights over land, while 'de facto' control in most rural villages remains in the hands of traditional rulers and landlords. To set the scene for case studies in Fako Division, we trace the genesis of struggles associated with the Bakweri land problem in what follows.

The Bakweri Land Problem: Genesis and Struggles³

The Colonial Origins of the Bakweri Land Problem

Upon arriving in Cameroon in 1884, the Germans were quick to identify the region around the slopes of Mount Fako (Mt. Cameroon) extending to the Atlantic Ocean as an agricultural dreamland. The area was seen as an important source of tropical tree crops needed by the German economy, which had hitherto imported them from non-German colonies more expensively. As a result, German companies rushed to the area and grabbed the most fertile pieces of land for large-scale commercial agriculture, especially following the German victory in the second Bakweri-German war of 1894 (BLC 1995).⁴ This amounted to a massive expropriation campaign with no compensation, which would gradually alter the social and economic conditions of the various Bakweri clans.

In a quest for more fertile land, the German government in the early 1900s instituted an inhumane policy of forcing the Bakweri, who until then lived in scattered settlements, into 'Native Reserves' around the plantations. This policy transformed the Bakweri, who prior to the arrival of the Germans were described as aggressive, independent and dynamic, into a dejected, recalcitrant and dependent people. Removed from surroundings on which their entire traditional culture derived its strength, the Bakweri put on passive resistance by refusing to do manual labour on their captured land even when forced.⁵ The Germans had a simple solution for this Bakweri strike. They imported other Africans to do plantation work, a move that engendered the age-old contempt by the Bakweri for immigrant workers who were detested for cooperating with the enemy.

After World War I, the British replaced the Germans in the Anglophone territory and were immediately confronted with the plight of the Bakweri. By this time, the Native Reserves were already over-crowded and the natives had little choice than to encroach on neighbouring plantation land. In 1926, one of the plantation companies issued eviction notices to the Bakweri squatters, a matter that was resolved by the Colonial Government only by granting the company land in Kumba Division (now Meme Division) in exchange. Population growth engendered traces of awareness among the natives of how they had been robbed of their land. This tendency kept the land problem at the forefront of Bakweri-British relations. Yet, no serious attempt was made by the British to return the confiscated Bakweri lands to the indigenous people. The authorities at the time argued that it was impracticable to divide the plantations into smaller plots as the natives had neither capital nor experience to manage them. Since British nationals and other Europeans were not enthusiastic about purchasing the plantations, they were returned to their pre-World War I German exploiters.

In 1946, after World War II, British Cameroon became a United Nations Trust Territory. Article 8 of the Trusteeship Agreement on Cameroon stated

clearly that 'in framing laws related to the transfer of land and natural resources, the administering authority shall take into consideration native laws and customs, and shall respect the rights and safeguard the interest, both present and future, of the native population'. In this context, the Cameroon Development Corporation Ordinance No. 39 of 1946 created the Cameroon Development Corporation (CDC) to take over and exploit the ex-German plantations. On 1 January 1947, the CDC went operational as the ex-enemy plantations were leased to it for sixty years, during which these lands would be developed for the benefit of the people.

Institutionalisation of the Bakweri Land Struggle

When the Bakweri got wind of the ongoing British plans to acquire the German-exploited lands, they quickly created what became known as the Bakweri Land Committee (BLC), which was charged with handling Bakweri land issues on behalf of the natives. The BLC started work by addressing two memos to the colonial authorities (the Governor of Nigeria and the British Secretary of State for Colonies) demanding that the plantation land be returned to the natives, together with a financial compensation commensurate with the years of exploitation of Bakweri land (BLC 1946). In this connection, the British made a series of proposals for reforms, many of which were never implemented by the time they left Cameroon in 1961. Upon the independence of Southern Cameroon, the leases granted the CDC under the colonial administration were transferred to the government of Southern Cameroon.

After the reunification of British and French Cameroons in 1961, the Bakweri land problem was, somehow, relegated to the background as the political entrepreneurs of the time were more concerned with national integration than regional and parochial issues. The autocratic regime of President Ahmadou Ahidjo (1960-1982) also stifled the functioning of all organisations that were not under government control. With the exception of occasional memos from very dedicated members, the BLC became inactive.

CDC Privatisation Plan and the Bakweri Land Struggle

On Thursday, 15 July 1994, President Paul Biya signed Decree No. 94/125 announcing a plan to privatise the CDC. In response, the Bakweri political, traditional and other elite mobilised as one person to resuscitate the BLC and to adopt a common position with regard to the privatisation plan, which was crafted without the slightest consideration to the Bakweri land problem. In less than a month, a memo was addressed to the President of the Republic in which the Bakweri insisted that for privatisation to take place, it had to be on the basis of a creative and informed partnership between owners of the land and providers of financial resources. In the absence of such a dialogue, they intimated that

it would not be possible to run a modern, technologically-sophisticated agro-commercial complex like the CDC (BLC 1994). In addition, they requested the payment of ground rent compensation in much the same way as the CDC was liable to pay ground rent for the use of the land, even though no such payment ever reached the natives.

For a period of over six years, the privatisation effort remained latent, and the government was reluctant to give any credence to Bakweri land claims. The struggle was rekindled in 1999 when government ministers toured Fako Division with a view to convincing the locals that privatisation was actually in their best interest. This was greeted with a memo reaffirming the private nature of the Bakweri lands under CDC control, and reiterating earlier demands for the payment of land rents owed to a Bakweri Land Trust Fund, as well as the direct involvement of the Bakweri in privatisation talks (BLC 1999). In addition, a high-profile BLC public relations campaign involving an extensive sensitisation of national and international opinions through newspaper articles and the Internet was orchestrated. In response to the pressure mounted by the BLC, the Senior Divisional Officer (SDO) for Fako banned any public manifestations by BLC, characterising it as an illegal organisation.

Globalising the Bakweri Land Struggle

As the SDO for Fako was busy clamping down on the BLC, consultations between the people of Fako and the Fako Diaspora community led to the establishment, in May 2000, of an interim bureau of the Bakweri Land Claims Committee (BLCC) in the United States. The goal was to establish an effective, active and visible BLCC presence within Fako and the Cameroonian Diaspora community; and to open permanent lines of communication with all potential buyers of the CDC, donor agencies, NGOs and foreign governments directly or indirectly involved in the sale of CDC plantations. The BLCC addressed a memo to the IMF Managing Director in June 2000, in which they observed that the Bakweri were not opposed to privatisation *per se*, but that the rental terms under which their land is leased to foreign developers should be clearly spelt out and acceptable to them, with a clear statement to eventually return the land to the indigenous people (BLCC 2000a).

In the same spirit, pro-BLCC demonstrations took place in New York and Washington DC during the September 2000 United Nations Millennium Summit that was attended by a Cameroonian delegation led by President Paul Biya. With unrelenting publicity given to the BLCC case both at home and abroad, the Prime Minister invited the leadership of BLCC for a working session in Yaoundé on 4 October 2000. During the meeting the Prime Minister observed that the issues of land ownership and the ground rents were legitimate demands, but urged that these demands be pursued separately from that of privatisation. The authorities argued that a hostile environment was being created by the

BLCC protest campaigns, which were scaring away potential investors. During this audience, the BLCC delegation re-echoed some of the Bakweri key demands (BLCC 2000b), notably the recognition of the Bakweri claim to CDC lands; the involvement of the Bawkeri in the CDC privatisation process; the payment of ground rents, and the allocation of a specific proportion of shares to the indigenous people upon privatising the CDC.

The BLCC continued the struggle by addressing a letter to all potential buyers of the CDC in which it was clearly observed that any negotiations embarked upon with the government on the occupancy of private Bakweri lands, which excluded the landowners from the privatisation exercise, would be entirely very risky. Potential buyers were also put on notice that any engagements resulting from such arrangements would be vigorously challenged in law courts (BLCC 2000c). On 19 October 2000, a group of 103 'concerned Cameroonians' addressed a letter to the IMF Managing Director, warning on the dangers of going ahead with the privatisation of the CDC without the involvement of the native landowners. In particular, the 'concerned Cameroonians' observed that the IMF must insist that proper consultation with stakeholder groups be undertaken before determining the future of the CDC. Consequently, any unilateral privatisation of the CDC without proper consultation of the people could not be considered among viable and sustainable solutions to the country's economic problems (BLCC 2000d).

Acting as the sole representative of the Bakweri people, as further mandated by the Chiefs of the Southwest Province, the BLCC challenged the Price Waterhouse Coopers⁶-endorsed privatisation strategy based on the 'commercial company-residual regulatory' formula (BLCC 2001). Under this formula, the various components of the CDC would be privatised piecemeal to foreign developers, leaving a 'government-controlled residual CDC' to manage the lands. Ten years after launching the privatisation of the CDC, only 65 per cent of the tea component has been taken over by Brobon Finex, a South African Consortium.⁷

Upon taking over 65 per cent of the tea component, massive retrenchments were undertaken with only partial compensation. The remaining workers are presently victims of salary cuts and accumulated arrears and striking workers in the Tole plantation have just recently been persuaded to resume work (Opio and Nana 2006). Future re-launching plans of the rubber and oil palm components propose to consider CDC lands as a separate variable to be given on lease.⁸ Thus, the expropriation of native lands that host the CDC, which invited immigrant labour and land scarcity, engendered land struggles in rural Fako.

The bone of contention as consistently formulated by BLCC was that CDC had only use-rights over the land it had been exploiting for decades. Therefore, the government was in violation of indigenous land rights of the Bakweri people by seeking to sell plantations on those lands without involving the landlords.

The struggles, as articulated by the BLCC have been centred on the payment of ground rents or royalties into a 'Bakweri Development Fund', or rents calculated and set aside as the Bakweri share capital of the various components of CDC to be privatised and ensuing dividends directed to the same fund. The government, on the other hand, argues that after selling off the various components to prospective buyers, a government-controlled 'residual CDC' would remain to manage CDC lands. Arrangements for the privatisation of CDC that fail to vest control over CDC-occupied land on the natives have been vehemently contested by the BLCC. Discussions of these issues have delayed the privatisation processes, potential buyers have been reticent. This provides the opportunity for authorities to revisit the drawing board on the issue of land.

Law No. 74-1 of 6 July 1974 that laid down the rules governing land tenure in Cameroon, made a distinction between private and national lands. The categories classified as private property included land entered in the Grundbuch (the official German land register). As submitted by BLC (1999), the CDC occupied land had been mapped and registered in official records prior to the commencement of the 1974 Land Ordinance and featured in the Grundbuch, and so do not fall in the category of national lands over which the state has powers of intervention.⁹ Recent developments suggest that, the issue is perhaps, not much that of whether CDC lands are national or private as stipulated in the 1974 land laws, but rather whether the Bakweri have a legitimate claim on ground rents. Two examples elucidate this point.

The 1994 forestry law incorporated the principle of derivation and instituted an annual forestry royalty, which is an area tax paid by logging companies. Thus, in the forestry sector even lands considered by the 1974 law as national do attract logging royalties, which are distributed in the order of 10 per cent, 40 per cent, and 50 per cent, to the village communities adjacent to the exploited area, the local councils where logging is taking place, and the State, respectively (Brown et al 2003). Another example that supports the Bakweri claim on ground rents on land exploited by CDC is provided by the recent contract concluded between the Minister of State for Property and Land-tenure and the Cameroon Sugar Company (popularly known by the French acronym, SOSUCAM) leasing out an additional 11,980 hectares of state land to the latter (Nyuylime 2006). Following this arrangement, the additional land will attract annual ground rents of about 77.4 million CFA francs renewable every five years, and distributed in the order of 20 per cent, 40 per cent, and 40 per cent, to the villages concerned, the councils involved, and the state, respectively. Consequently, depriving the indigenous people of ground rents on land exploited by CDC is interpreted as double standards on the part of the authorities (BLCC 2004).

These examples indicate that the Bakweri claim on ground rents on the land exploited by the CDC could be considered legitimate.¹⁰ This legitimacy is further strengthened by the 2006 rulings of the African Human Rights Commission,

which recognises that the indigenous Bakweri people have a strong case backed by history and law, and urges the state and BLCC to search for an 'amicable settlement of the land dispute', a ruling which has been ratified by the African Union.¹¹ In much of what follows, case studies are conducted to capture patterns of land struggles in rural Fako.

Methodology and Case Study Villages

Some Methodological Issues

The ensuing results are based on focus group discussions held in May 2006 to elicit information on land-related struggles in rural Cameroon. Interviews were conducted with administrators, delegates of line ministries in the sub-divisional headquarters, and village chiefs. Data was collected at the community level through focus group discussions involving key informants.¹² The interview guide spanned aspects such as the basic characteristics of the villages, migration and labour markets, land holding relations, configuration of land disputes, dispute settlement mechanisms and effects of land disputes.

Participants in each focus group discussion were identified and appointments fixed in advance. This procedure was adopted because the quality of observations was judged to depend more on knowledge about the issues than the density of participation. Issues for discussion were raised point-by-point by a facilitator, who gradually guided discussants to arrive at a broad consensus on orderings of modalities of variables by importance, and further guided them to attribute points (out of ten) to each set of modalities in tandem with their prevalence as required.

Map 11.1: Map of Fako Division



Source: <http://www.africanfront.com/conflict7.php>

Basic Characteristics of the Villages

The villages of the study were from three of the four sub-divisions that make up Fako Division (see Map 1)¹³, which harbours over 60 per cent of the CDC plantations. Bonadikombo (Mile 4) was surveyed in the Limbé sub-division, Bolifamba (Mile 16) in the Buea sub-division and Yoke in the Muyuka sub-division. Villages were chosen on the basis of potential for land disputes as was guided by the Provincial Delegate of State Property and Land Tenure. We selected twelve participants from Bonadikombo, nine from Bolifamba and eleven from Yoke, making a total of 32 respondents, including nine women, three from each village.¹⁴

Table 11.1: Some Basic Features of the Villages Surveyed

Variables		Villages			Average
		Bonadikombo	Bolifamba	Yoke	
Distribution of land, including Forest in the Village (%):	Forest Area	65	3	10	26
	Settlement Area	15	60	75	50
	Farm Area	20	37	15	24
Titled Land in the villages (%):		60	55	30	48.3
Village Population size		10 000	15 000	8 000	11 000
Population Distribution in villages (%)	Bakweris	5	10	10	8.3
	North-Westerners	55	60	70	61.7
	Francophones	2	5	3	3.3
	Non-Fako South-westerners	37	15	5	19.0
	Non-Cameroonians	1	10	12	7.7

Source: Compiled from the survey by authors

One of the main features of these villages is the dominance, in terms of population, of non-natives or settlers. As Table 11.1 indicates, the native Bakweri make up, on average, only about 8 per cent of inhabitants of villages surveyed. In Bonadikombo, they represent a mere 5 per cent of the population. Settlers from the Northwest Province of the country constitute 55-70 per cent of the inhabitants in the villages, an average of almost 62 per cent in the villages surveyed. Another significant characteristic worth noting is the distribution of the land between farming, settlement and forest area. On average, 50 per cent of the land in the villages is occupied by settlement. Sharp contrast exists, as settlements occupy only 15 per cent of the land in Bonadikombo and 75 per cent in Yoke. Most of the land in Bonadikombo is still under forest (65 %), as against only 3 per cent in Bolifamba.

Agriculture is the main activity in the villages, occupying about 24 per cent of the land area. A wide range of crops is produced in each village, notably cassava, cocoyams, yams, maize, plantain and banana, as food crops, and robusta coffee, cocoa, rubber, oil palm and tea as tree crops. Although the main activity in the villages is agriculture, there are a number of non-farm activities such as tailoring, bricklaying, restaurants, trading and car repairing. The villages are somehow metropolitan in nature because of the presence of CDC, relatively good road and waterway networks, as well as proximity to Douala, the commercial capital of Cameroon (Map 1). The percentage of titled *land* 15 – 48 per cent is an undisputable indication of the metropolitan nature of these villages.

Results of Case Studies

Migration, Labour Markets and Land Holdings

The three villages experience both in-migration and out-migration for work at certain times of the year. In Bonadikombo and Bolifamba, emigrants usually go to towns that are easily accessed for non-farm work (like Limbe, Douala, Tiko), while emigrants from Yoke would rather go to other rural areas mainly for agricultural work because of declining agricultural wages in this village. Immigrants to these villages usually target agricultural work, but most specifically as casual workers in CDC plantations, notably during clearing (Table 11.2). Some town dwellers, however, take up personal farms in these villages and traders from towns visit these villages to do business on market days.

The net direction of migration since independence (1961) has been more arrivals than departures in the three villages under survey, and perhaps in the whole of Fako Division, because of fertile soils and the presence of CDC, which is the main employer in the country second only to the State. While rural wages have been increasing in Bonadikombo, perhaps, due to its proximity to the oil City of Limbé engendered by rising demand for food crops, the reverse is observed in Bolifamba and Yoke in the last ten years (Table 11.2). Having multiple occupations was a common feature in the villages, although less so in Yoke than in the other two villages.

Table 11.2: Migration and Labour Markets

Variables	Bonadikombo	Bolifamba	Yoke
• Emigrate at certain times of the year for work?	Yes	Yes	Yes
• Destination of emigrants from these villages	Limbé Buea Tiko Douala	Limbé Tiko Douala Yaoundé	Pendamboko Musone Bakundu Banga Mundema area

• Type of work attracting emigrants		Non-Agric.	Non-Agric	Agricultural
• Immigration for work from other communities for work at certain times of the year?		Yes	Yes	Yes
• Origin of immigrants		Mapanja Wotutu Limbé Douala	NWP Other Parts of SWP Littoral Centre	NWP Other Parts of SWP Littoral Nigeria
• Type of work attracting immigrants		Non-Agric.	Non-Agric.	Agricultural
• Net direction of migration since independence (1961)		More arrivals than departures	More arrivals than departures	More arrivals than departures
• Rural average daily wage rate (in CFAF)	Land preparation	2000	1500	1350
	Planting	3000	1000	1850
	Weeding and maintenance	3000	2300	1350
	Harvesting	5000	1000	2350
• Trend of daily wages in the last 10 years		Increasing	Decreasing	Decreasing

Source: Compiled from the survey by authors

Table 11.3: Land Holding Relations

Variables		Villages		
		Bonadikombo	Bolifamba	Yoke
• Evolution of the average size of land owned by a farm household		Decreasing	Decreasing	Decreasing
• legal recognition of the contractual agreement	o Lease (rents)	√	√	√
	o Sale	√	√	√
	o Collateral	√	√	√
	o Sharecropping	√	√	√
	o Inheritance	√	√	√
• Traditional recognition of the contractual agreement	o Lease (rents)	√	√	√
	o Sale	√	√	√
	o Collateral	√	√	√
	o Sharecropping	√	√	√
	o Inheritance	√	√	√
• Gender sensitivity of inheritance		Neutral	Neutral	Neutral

Source: Compiled from the Survey by authors

The average size of landholding by a farm household has typically been decreasing in all the three villages under survey. This tendency is mainly attributed to population pressure and the presence of CDC plantations. Whether through formal or informal arrangements, it is not prohibited to put land under any of the following contractual agreements – lease, sale, collateral, sharecropping and inheritance (Table 11.3). It is, however, very difficult, if not impossible, for an individual to obtain credit using communally-owned land as collateral. Obtaining land by way of a pure gift, which is still being practiced in some Cameroonian villages is no longer practiced in villages under survey – perhaps because of their cosmopolitan character. Land inheritance in the three villages is not gender-biased, yet land inherited by female next-of-kin is frequently undermined and encroached upon by their male neighbours.

Configuration of Land Disputes

For the three villages as a whole, the most common land tenure arrangement is family (communal) (42 %), followed by squatting (23 %) and lease (15 %). This mimics the distribution of land occupation in Bonadikombo and Bolifamba. Yoke exhibits some difference, though family and squatting are still the most common forms of land occupation (Table 11.4). The presence of CDC was unanimously the overriding source of land-related disputes in the villages, contributing, on average, over 80 per cent of reported land-related conflicts. Seasonal migration was reportedly the least source of land-related conflicts in the villages, apart from Yoke where it contributes more than natural population growth.

Contestations put up by the local communities to obtain more land from the CDC are yielding fruit because CDC-exploited land under fallow is occasionally given to the natives upon request through the government or land encroached upon by the adjacent populations is sometimes surrendered to them by the CDC. Of about 60,000 hectares leased to CDC roughly 1,923 hectares have cumulatively been surrendered to the local population in Fako Division as indicated by authorities in the Southwest Provincial Delegation of State Property and Land Tenure. This gesture is frequently another source of land conflicts as some family members attempt to grab and sell more than their fair share in the process of redistribution. Even some non-natives that have been in the village for many decades or their offspring have the same attitude. It should be recalled that some of the village chiefs in Fako Division are non-natives. The urge on the part of selfish individuals to grab more land is being exacerbated by divisional officers, who have an incentive to short-circuit the ruling ancestry and support the enthronement of puppet chiefs who are more prepared to yield to their whims and caprices. This rent-seeking attitude has debased the authority of village chiefs and reinforced chieftaincy conflicts as well.

There appears to be no dominant single reason for the numerous land disputes in the case study villages, but a variety of them. However, exceeding boundaries

by neighbours, reneging on earlier contracts and non-respect of tenancy appear to be the common reasons. Squatting and inheritance are, however, non-negligible reasons for land disputes (Table 4). Disputes also exist among squatters and problems of inheritance are more prevalent among female inheritors as their male counterparts frequently seek to undermine and challenge them.

Table 4: Configuration of Land Disputes (Ranking)

Variables		Bonadi kombo	Boli famba	Yoke	Average
• Types of Land Occupation	o Lease (rents)	3	3	4	3
	o Sharecropping	4	4	4	4
	o Owner-user	5	4	3	4
	o Family	1	1	1	1
	o Squatting	2	2	2	2
• Sources of land disputes in the Village	o Population growth	2	2	3	2
	o Migration	3	3	2	3
	o Presence of the CDC	1	1	1	1
• Reasons for land disputes (or conflict)	o Neighbours encroaching	1	2	1	1
	o Non-respect Tenancy	3	2	2	3
	o Inheritance	5	3	5	5
	o Squatting	4	2	4	4
	Contesting earlier contracts	2	3	1	2
• Parties in land disputes (or conflict) :	o Neighbours	2	2	2	2
	o Family members	2	2	3	3
	o Landlord-Tenant	1	3	4	4
	o Community-State (CDC)	1	1	1	1
• Ethnic Distribution of land Disputes	o Native vs Native	1	3	3	2
	o Native vs Non-Native	2	2	1	1
	o Non-Native vs Non-Native	3	1	2	1
• Gender Distribution of Land Disputes:	o Male vs Male	2	1	2	1
	o Male vs Female	1	2	1	2
	o Female vs Female	3	3	3	3
• Age Distribution of land Disputes :	o Youth vs Youth	2	3	3	3
	o Youth vs Adult	2	2	2	2
	o Adult vs Adult	1	1	1	1

Source: Compiled from the focus group discussions by authors

The dominant parties in land disputes is the community versus the state (or CDC), which constitutes the most common type of land disputes in all three

study villages. Disputes are also prevalent between neighbours (ranked second in all the villages), as well as family members (ranked third on average) in the three villages. Family land is traditionally inalienable, and thus protected against sale and any attempt at selling by an individual is vehemently contested by other family members. Landlord-tenant cases are the least prevalent in two of the three villages, though among the most prevalent in Bonadikombo (Table 11.4).

There appears to be no consistent dichotomy between natives and non-natives in terms of land-related conflicts for the three villages pooled together. However, at the level of the individual villages, the ethnicity of parties in conflict seems to be important. Native/non-native disputes account for the most common conflicts in Yoke, while the bulk of disputes in Bolifamba are among the non-natives, who have diverse ethnic backgrounds. Most of the disputes in Bonadikombo are among the natives who make up only 5 per cent of the population in the village (Table 11.4).

Because of the low wages paid to the immigrant workers, most of them resorted to farming to supplement their incomes. With the growing population and increasing land scarcity, the second generation of natives began to contest earlier contractual land engagements arrived at between the non-natives and their parents. Some of the settlers who have been in Fako Division for many decades started claiming the status of natives on land matters, especially when CDC surrendered some land to the natives, but these claims were viewed with suspicion. As the natives came to understand that non-natives were generally participating in development activities in their villages of origin and normally would convey corpses of deceased comrades to bury there, the issue of migrants' illegal occupation of land was brought to the fore. Although tenure conflicts existed among natives in the case study villages such as Bonadikombo, it was more prevalent between the indigenous people and non-natives, especially in Yoke. These conflicts were generating feelings of insecurity, which do not favour incentives to build up land-related assets. In Bolifamba, the vast majority of disputes are between men. There are more disputes between men and women in Bonadikombo and Yoke. Disputes among women are low in all three villages (Table 11.4).

Age seems to be an important factor in the incidence of land disputes. A very high proportion of land disputes in the case study villages are registered among the adult population. A moderate proportion of land disputes are thought to exist between the youth and adults, but more so in Yoke than the other two villages. The incidence of disputes among the youth themselves is quite low. The situation in Yoke is peculiar because the youth were reported to be disenchanted and recalcitrant, especially with the closure after the 1972 Reunification of the three wood industries (Cost Timber, Leeman Company and Cameroon Timber Industry) that were providing them job opportunities.

Dispute Settlement Mechanisms and Effects of Land Disputes

As indicated in Table 11.5, appeal is generally made either to customary rules or official laws in changing land ownership. They sanction a significant number of the changes in land ownership in the three villages. This general trend mimics the situation in Bonadikombo, but not in Bolifamba and Yoke where there is much disparity between the use of the customary rules and official law. In Bolifamba, which is nearest to the provincial capital, it is the official land laws that are mostly applied in changing land ownership. Relying only on the forces of demand for and supply of land in land transactions without either formal or informal safeguards is negligible in the case study villages.

As resources become scarcer and hence more valuable, there is bound to be more competition amongst users for access. Thus, it is important that there be clear procedures and mechanisms by which ensuing conflicts might be resolved, to avoid long and protracted disputes, which could develop into violence. Areas likely to experience serious competition and potential for conflict include peri-urban areas, wetland areas, and zones into which large numbers of farmers have been immigrating. There are three main dispute settlement mechanisms used in the three villages – traditional council, land commission and law courts.

The traditional council (TC) assists the village chief in the settlement of especially land-related disputes. A TC is typically made up of a chairman, secretary, treasurer, messengers and village elders. Upon payment of a token fee, the parties in conflict are summoned for the hearing of the matter. After hearing, the TC and both parties proceed to inspect the plot under dispute, and then deliberations usher in the judgement. If any of the parties in conflict is not satisfied with the verdict, he/she may appeal to the land consultative board.

Table 11.5: Dispute Settlement Mechanism (Incidence)

Variables		Bonadi kombo	Boli famba	Yoke	Average (Ranking)
• Rules Sanctioning Changes in Land Ownership (%):	Customary rules	Significant	Low	High	Significant (1)
	Official law	Significant	High	Low	Significant (2)
	‘Pure’ land Markets	Insignificant	Insignificant	Insignificant	Insignificant (3)
• Distribution of dispute settlement (mediation) mechanisms (%)	Traditional Council	Low	Low	Low	Low (2)
	Land commission	High	High	High	High (1)
	Law courts	Insignificant	Insignificant	Low	Insignificant (3)
• Scope for Contradiction between these three mechanisms		Low	Low	Low	Low
• Institutional Shopping		Insignificant	Insignificant	Insignificant	Insignificant

Source: Compiled from the Survey by authors

The Land Consultative Board or Land Commission is set up to settle land matters in a more participatory manner. It is composed of administrative authorities – Divisional Officer, Land and Surveys Department, and traditional authorities (chief and two notables). The parties in conflict make their submissions together with their witnesses, and are cross-examined by the other participants in turn. A field visit is made, further cross-examinations are made if required, deliberations take place, and the final judgement is meted out.

The procedure of the law courts is the one applied for any other case, whether land-related or not. Participants include: the magistrate, parties in conflict, witnesses, and perhaps lawyers. The case is first heard in the Court of First Instance. If one of the parties is not satisfied, he/she may appeal to the High Court, Appeal Court and up to the Supreme Court if he/she has the patience and means to do so. Settlement of land disputes by the law courts is believed to be costly, time-consuming and least effective.

As shown in Table 11.5, the most preferred settlement mechanism in the three villages is the Land Commission, which handles a high proportion of land disputes, with much fewer going to the Traditional Council. This trend is reflected in each village. The Law Courts are only infrequently used because villagers believe that they are elitist, expensive and time-consuming, with no guarantee of fairness. Scope for contradictory verdicts using the various dispute settlement mechanisms was observed as low, and the incidence of institutional shopping was reported as insignificant. Effects of disputes on investments in land, use of farm inputs (fertilisers, paid labour, pesticides etc.), farm output and access to infrastructure (road, electricity, water) were reported as negative in the case study villages (Table 11.6). Land-related disputes should therefore have a negative effect on asset building and, consequently, on the returns on these primary assets.

Table 11.6: Effects of Land Disputes (or Conflict)

	Bonadikombo	Bolifamba	Yoke
• Investments in Land	Reduction	Reduction	Reduction
• The use of farm inputs (fertilisers, paid labour, pesticides etc)	Reduction	Reduction	Reduction
• Farm Output	Reduction	Reduction	Reduction
• Access to Infrastructure (Roads, Electricity, Water)	Reduction	Reduction	Reduction

Source: Compiled from the survey by authors

Conclusion

This chapter has examined how changes in land ownership and institutions, which are driven by the colonial heritage and other global forces, have engendered the emergence of land struggles and disputes in rural Cameroon. To set the scene, a conceptual framework that relates globalisation, institutions, conflicts and household asset holdings was presented. The chapter further outlined the expropriation campaign orchestrated by the Germans together with the struggles waged by the indigenous people. Colonial activities resulted in a number of changes with far-reaching implications which engendered land struggles and disputes in rural Fako. Data collected from three villages in the Fako Division threw light on current conditions in rural Fako. The net direction of migration in the case study villages since the colonial times was observed as more arrivals than departures, a tendency that is true for the entire Fako Division, and attributable mainly to the presence of CDC. Average land holdings by farm households typically has decreased over time, a tendency that was ascribed both to population pressure and the presence of CDC, which was unanimously identified as the overriding source of land-related disputes.

Exceeding boundaries by neighbours, reneging on earlier contracts and non-respect of tenancies appeared to be the common reasons for land disputes. Community-state disputes were identified as dominant in the case study villages. Land disputes were observed to be ethnically sensitive and age was an important factor in determining the incidence of land disputes since adults were more prone to land disputes than youths. Disputes between men and women were more common in Bonadikombo and Yoke than Bolifamba.

Land Commissions were considered as the preferred dispute settlement mechanism in all case study villages, while Law Courts were infrequently accessed because they were believed to be elitist, expensive and time-consuming, with no guarantee of fairness. The scope for contradictory verdicts using the various dispute settlement mechanisms and institutional shopping was reported to be low. In the case study villages, effects of disputes on investments in land, use of farm inputs, farm output and access to infrastructure were reported as considerably deleterious.

These results have implications for policy on the reallocation of land and the recognition of indigenous rights to land in the process of large-scale expropriation for targeted uses. In particular, (1) authorities are urged to continue pursuing strategies designed to free-up more CDC lands, especially those adjacent to settlement areas and make such land available for acquisition by residents, and (2) authorities are encouraged to systematically involve locals in decisions and proceeds related to the use, expropriation or transfer of land holdings for targeted purposes throughout the country. Eliciting the participation of locals does not only respect land as an important factor of production and employment, but also its value as the conduit of cultural beliefs that mythically guarantee the stability of rural communities.

Notes

1. We acknowledge the assistance of Mathias Sakah Lukong in the data collection process.
2. Earlier attributed to Elias (1962), *Nigerian Land Law and Custom*, London.
3. Much of the account reviewed in this section is derived from the Bakweri Land Committee Web-site: http://www.bakwerilands.org/land_problem.htm, newspaper articles and discussions with some Bakweri elite.
4. See Njoh (2002) for an account of the two Bakweri-German wars.
5. The plight of the Bakweri engendered by this single German act is well captured by the 1922 British Annual Report to the League of Nations which stated that '...uprooted from the homes of their forebears, settled willy-nilly on strange soil, deprived of their old-time hunting grounds, and fishing rights, the Bakweri have retained but a small sense of tribal unity or cohesion' (Ardener et al 1960).
6. Price Waterhouse Coopers is the firm handling the CDC privatisation for the Cameroon government.
7. The signing of the agreement gave birth to the Cameroon Tea Company on 18 October 2002, which took over management of the three tea plantations that hitherto belonged to the CDC: Tole (454 hectares) in the Southwest Province; Djuititsa (446 hectares) in the West Province, and Ndu (668 hectares) in the Northwest Province.
8. The land issue to be given on lease constitutes one of the major preoccupations of potential investors. Other issues of interest include: privatisation by plantation, overstaffing (CDC employs about 11,500 workers, second only to the state), and the poor state of road network in the plantations.
9. See the Web-site: http://www.bakwerilands.org/1999_memo.htm.
10. Although the Bakweri land problem is still pending, the sons of the Bakweri land have occupied the post of Prime Minister of the Republic of Cameroon for twelve years up to 30 June 2009.
11. African Commission Rules on Bakweri Land Problem, 2006, available on http://english.ohmynews.com/articleviewTarticle_view.asp?menu=10400&no=27543&rel_no=1
12. Like quarter heads, members of traditional council, teachers, agricultural field workers, women and retirees.
13. Fako Division is one of the six divisions in the Southwest Province. It plays host to Mt. Fako (or Mt. Cameroon) the highest peak in West Africa – 4,095m above sea level. Its four sub-divisions are Limbé, Buea, Muyuka, and Tiko. It has a total surface area of 2,060km² and a population of about 330,693 inhabitants. The climate of Fako is the equatorial type, wet and dry seasons. The sub-soil is rich in petroleum resources around the Limbé area extending to the Bakassi area in Ndian Division.
14. These were the only women identified as having a good knowledge of the history of land matters in the villages.
15. In some villages in Cameroon, no land is titled

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Appropriation of Land for Housing and African Immigrant Entrepreneurship in Pointe-Noire, Congo-Brazzaville

Gabriel Tati

Introduction

This chapter is concerned with the understanding of the dynamics of informal entrepreneurship involving African migrants as they negotiate their claims for housing space in order to consolidate their livelihoods in the city of Pointe-Noire in Congo-Brazzaville. The role of the public authorities in mediating the demands for economic space between communities of migrants and oil companies is critically assessed at the interface of formal and informal institutions. Pointe-Noire is the second largest city in Congo Brazzaville with an estimated population of 625,000 inhabitants in 2005. The economic functions of Pointe-Noire are strongly driven by the exploitation of vast reserves of oil. The country itself, Congo-Brazzaville, is a major destination of immigrants from various countries in search of better living conditions. Like its neighbour, Gabon, Congo's attractiveness as a migration destination is strongly linked to its economic wealth propelled by oil exploitation. The growing demands for goods and services generated by rapid urban growth have given rise to some niches of economic activity within the informal sector. Income-generating opportunities have gradually been opened up to foreign African migrants as they encounter barriers to formal sector employment. This international migration, as documented elsewhere, has been primarily driven by perceived rewards in sectors that do not require a

high level of technology but for which the operation of ethnic-based networks contributes to individual achievement (see, for example, Light, Bhachu and Kragorsis 1993). This seems to have been the case in Congo-Brazzaville. African immigration entrepreneurship has expanded in the economic sectors of retailing, coastal fishery, carriage and housing construction (Tati 1993). In this chapter, the focus is on two groups of economic actors, namely, home-furniture makers and fishermen in the coastal zone. The substantial growth pattern in these sectors of economic activity is associated with the appropriation of land, which operates through the development of informal housing in the physical environment where those economic activities are taking place.

Appropriation of land is conceptualised as a social process through which a physical land site, a delineated territory falling under the public domain, is transformed at the micro-spatial level through the daily activities of immigrants, as they bring forth, or submit to, changes in socio-spatial patterns. In the course of appropriation, migrants build, produce, transform, and attach significance to their own territory and the national one as well. They take possession of space according to resources and their power in the social framework either of the existing laws, rules and norms they elaborate specifically for a purpose. Appropriation of space can be illegal, but it depends upon the actors engaged in the process. Thus the appropriation of space is a dialectical process. Whether it involves conflict or not, it allows individuals and social groups to express their identity and to realise their aspirations.

Concretely, appropriation of land implies building the environment and rehabilitating or destroying the old built environment. Appropriation of space is also a process by which groups and individuals, in this case migrants, take symbolic possession of space through the cultural expression of community values or personal achievements. Culture is one the main dimensions in the appropriation of space, the other dimension being the space economy or the economics of the space, which is being appropriated. Dwelling is a cultural action because it includes shaping a space and giving it a volume according to specific tastes and aesthetic criteria, as it does in establishing a social network inside the migrant community. In brief, because culture implies communication and processing identities and projects, it is at the heart of the appropriation of space.

The chapter provides insights into the ways in which clusters of migrant enterprises in artisanal fishery and furniture-making drive informal occupancy of urban land for housing and business. In this study, a cluster is conceived as a group of producers making the same or similar things in close proximity to each other (Schmitz 1992). According to McCormick (2001), this definition seems appropriate to developing countries where geographic proximity can help to overcome barriers created by poor infrastructure and weak information systems, and where people favour face-to-face communication.

The chapter's analytical approach is structured around four interrelated components. The first component documents the prominent features of the settlement patterns within each community. The second component examines the ways in which each community has economically organised itself. It is therefore important here to examine the collective economic behaviours within each community that have contributed so far to their spatial expansion. The third component provides details on the role of assets in the transformation of the settlement of migrants. By so doing, a better understanding of the relationships between the expansion of economic activities and the dynamics of the settlement will be achieved. The fourth component builds upon the second and third, and examines the types of social dialogue that have emerged between different partners, including the municipal authority, in the process of occupancy of public space. The various aspects of such a dialogue will be discussed in terms of conflict resolution, formal and informal mediating instruments used in the process of space occupancy and growth prospects for those unregistered small-scale enterprises. For reasons of clarity, details concerning each community of foreigners are presented separately.

Three interrelated objectives are pursued in this chapter. The first is to examine the mechanisms through which two groups of African migrant entrepreneurs use ethnic networks in the development of enterprises in fishery and furniture-making and informally appropriate land for industrial and housing purposes in the city of Pointe-Noire. The second objective is to explore the relationship between this transnational labour migration and economic networking within enterprises, and how linkages between migrant enterprises result in the formation of claims for rights to space ownership. The third objective was to examine some sub-processes taking place at the interface between local institutions and the development cycle of clustered informal enterprises and housing owned by African migrants in the city of Pointe-Noire. The following research questions guided the study on which the chapter is based.

- a) What are the forms of collective action for land acquisition African migrants have been engaged in and what are the variations in the methods of land occupancy accompanying the transformation of migrant settlements?
- c) How do individuals within the migrant community perceive the importance of spatial location in the running of their business?
- d) What are the arrangements over land rights and land use in land acquisition for housing within the community of migrants? In relation to this, are there any land markets in operation for migrants?
- e) How has this land appropriation shaped the relations between the migrant communities and the other users of the space and what relations have emerged between the formal institutions and migrant communities with regard to the expansion of informal housing and land occupancy in spaces owned by the municipality?

In line with these questions, there was the need for careful review of some contextual considerations and theoretical issues underpinning the social sub-processes associated with transnational migrant networks and their insertion in the urban space of the host society. These issues are tackled in the sections of the chapter which follow.

Contextual and Entrepreneurial Considerations

In recent years, African immigrant entrepreneurs from West Africa and Democratic Republic of Congo have been remarkably successful in the informal industrial sectors of coastal fisheries (Jul-Larsen 1994) and furniture-making, respectively. These activities have rapidly developed as a consequence of migration flows resulting in large numbers of enterprises. African migrant entrepreneurs have taken advantage of niche economies in the city. This remarkable economic success has been paralleled with an appropriation of urban space for both economic and housing purposes. Fuelled by migration influxes, these communities have grown considerably in size. As one consequence of this demographic growth, the fishers' and furniture-makers' settlements have spatially expanded and housing has significantly been developed on each site. Housing and economic activity have both developed so rapidly that the sites occupied by the two settlements of foreigners have been recently qualified as new wards of the city. This expansion is expected to intensify as the potential for (sustained) growth remains high as far as these informal industrial activities are concerned. The social integration of members of these two immigrant communities is impressive despite the illegal character of land property ownership and the volatile social environment. In effect, up to the mid-1980s, foreigners running businesses in the Congo had experienced violent confrontations with locals. As has been the case in many other African countries, African immigrant entrepreneurs have in the past had to deal with attitudes of open xenophobia. In some circumstances, there have been forcible massive expulsions from the country. Properties belonging to migrants were either destroyed or confiscated by local populations. From the 1960s to the 1980s, events of this kind occurred frequently. Surprisingly, since the 1990s, the increasing entrepreneurship paralleled with illegal appropriation of public space seems not to generate similar attitudes. Instead, the prevailing attitude suggests a real change in the way African immigrant entrepreneurs are perceived by the local population. A climate of tolerance has replaced exclusionist attitudes toward African entrepreneurs. These foreigners are regarded as residents of the city and, for that reason, due consideration has been given to their positive contribution to the local fishing industry. One can even speak of a trend towards an inclusive city as immigrant communities are gaining access to land for housing. The central issue of concern in this chapter is therefore the identification of the mechanisms that have contributed to the illegal appropriation of public space by foreigners

without strong opposition from local populations or authorities. This issue finds its significance in the non-eligibility of these immigrants for the status of citizenship. Such a status defines the connection of individuals to the state and gives its citizens a particular identity and privileges denied to non-members of the state, variously referred to as foreigners, immigrants or aliens (Akopari 2005).

A Critical Review of the Underlying Theoretical Considerations

The field of migrant entrepreneurship in urban contexts particularly with reference to developed countries has received a great deal of attention from a large number of social science scholars. The many faces of ethnic immigrant entrepreneurship have been reviewed in Bun and Hui (1995) drawing on the experiences of developed countries. These authors have documented the different theoretical and empirical perspectives on the dynamics of ethnic migrant economy in the opportunity structure, particularly markets that are underserved or abandoned by local entrepreneurs. Their review of the literature on ethnic entrepreneurs provides an understanding of a significant form of adaptation by various ethnic migrant groups. These authors, however, underscored that most past research has been focused on those who have migrated to established societies (United States, Western Europe, Canada, Japan and Australia). The literature review by Bun and Hui identified two pressing questions confronting research in the field of migrant economy. The first relates to understanding the dialect-based networking and how this functions across international borders. According to the authors, this is crucial to ascertaining empirically if reliance on family, kinship and clan ties in business transactions is central to the dynamics of migrant enterprise or not. The second question concerns the hows and whys of observed similarities and variations in entrepreneurial type, size and performance within and among different immigrant groups in the opportunity structure. As formulated in the research questions above, these two concerns are very central to this chapter.

The conceptual framework for the chapter is built around ethnic migration network theory. Migration network theory has been emphasized in the explanation of the dynamics of entrepreneurial migrant groups in developed countries (Light and Bhachu 1993). In its more general form presented in Light et al (1999), the theory conceives of migration as embedded in social networks that span continents and decades and that arise, grow, and ultimately decline. A network approach fits individual decision makers within groups, and it interposes groups between macroscopic social and economic conditions and actual migrations. By linking populations in origin and destination areas, migration networks create self-sustaining migration flows that become partially independent of the push and pull factors that cause it to develop in the first place. In relation to international migration, networks fit within assumptions of a risk-diversification strategy model. Implicitly, the recognition is that international migration strategically

diversifies risks because international borders create discontinuities that promote independence of earnings at home and abroad. Migration networks reduce the economic risks of migration, thus rendering the strategy more attractive from a risk-diversification perspective. It has been argued that migrant networks are most significantly crucial in the setting up and development of migrant enterprises and enclaves (Boyd 1989) and in the concentration of migrants from ethnic groups and localities in particular occupational and ecological niches in destination societies (Hugo 1981).

The general conceptualisation of the network theory has been criticised by Light et al (1993) and Light et al (1999). According to these authors, the network theory as framed by several prominent scholars (Massey was the most quoted among them) suffers some self-imposed limitations. The theory tends to concentrate upon facilitation and efficiency, slighting structural changes caused by immigration networks in the destination economy. In their facilitating function, networks make it easier for immigrants to find housing, jobs, protection, and companionship in the city (Lin and Dunin 1986). This is, according to Light et al (1993), the *raison d'être* of networks as framed by most prominent scholars. When this function is efficiently performed, available jobs and housing that exist in the immigrant-receiving locality are subjected to decline, leading to *economic saturation*, a term used by the authors. Such saturation poses the obvious limit to the general conceptualisation of network theory in the sense that in the locality there will be no more job and housing opportunities to be taken up by new migrants. At the point of real economic saturation, a saturation crisis exists in that a migration network cannot locate the jobs or housing that provide its *raison d'être*. The resulting migration outcome of this crisis is that migration to the locality is tremendously reduced. Framed along these lines, Light et al argue that networks become just a competitive ethnic resource of the immigrant population as they help immigrants to obtain jobs that natives are also trying to locate and would have accepted. Under these circumstances, migration networks help to exclude natives from vacant jobs and housing in their own economy.

Light et al (1993) and Light et al (1999) depart from this limited theoretical framework, and instead suggest another theoretical perspective on migration networks that emphasises the function of increasing the aggregate supply of local opportunities. This perspective is very central to this chapter. Light et al argue that this function adds new opportunities and, through it, the migrant network modifies the economy in the destination region or locality. Economic saturation is therefore postponed or possibly even avoided. It follows that not only do they relocate co-ethnics from one nation to another, the migrant networks have or can assume a role in developing and increasing the migrants earning and housing opportunities in the destination economy. According to Light et al, the method that encourages this result resides in immigrant entrepreneurs creating new firms

or expanding existing ones in the locations of destinations, creating new jobs and housing for co-ethnics without reducing the supply available to non co-ethnics. The authors view this process as the operation of the immigrant economy that consists of self-employed immigrants and their co-ethnic employers.

The arguments developed by Light et al (1993) and Light (1999) represent an important advance in the study of relationships between migration networks and entrepreneurship under the circumstances of non-economic saturation. Put in the context of this article, such circumstances are comparable to those prevailing in the localities where migrant enterprises are being developed. Both employment and housing obey the hypothesis of a non-economic saturation regime discussed by the authors. The arguments, however, present some important conceptual omissions. First, the operation of migrant networks is taken as given in most case studies in reference to individual migrant entrepreneurs from a specific citizenship in the host country. The dynamic relations between those entrepreneurs and the new migrants prior to their move were surprisingly absent from the different analyses though concerned with the role of networks. How new migrants got where they were in the origin country-host country continuum is a question that has been insufficiently explored in studies on migrant networks. In other words, the works presented in Light and Bachu (1993) did not investigate how settled migrants in the host country resort to collective action through community-driven development. Equally neglected in this work is the resilience (capability to adapt and adjust to changes) of community migrants to sustain their livelihoods and consolidate their landholding assets in a disputed urban space. This issue of resilience finds all its resonance in the peculiar situation of uncertainty in which most of these migrants find themselves.

The conceptual framework underpinning this study emphasises the importance of ethnic networks in reproducing the necessary mechanisms that drive the dynamics of enterprising and space appropriation. The analyses focus on the interactions between the economic life of the space, the social actors directly or indirectly involved in and the cultural expression reflected in the transformation of the site. It is argued here that these interactions produce or reproduce the formal/informal mechanisms through which the space for domestic uses and livelihoods is constructed and appropriated by African migrant entrepreneurs. These interactions also provide the basis for legitimising this negotiated appropriation with the local authorities.

The chapter is based on research that necessitated several visits by the author to the sites where migrants have settled. The last site fieldwork took place between 15 December 2005 and 20 January 2006. The collection of data for this research heavily privileged a qualitative approach that involved a collection of in-depth interviews from informal enterprises run by African foreigners from two communities in the city of Pointe-Noire; a community of fishermen from West Africa and a community

of furniture-makers from the Democratic Republic of Congo (former Zaire). The first community is located in the coastal area, almost sharing the same space with a multinational oil company. The second community is located between popular residential areas and the trading and business centre of the city. Both sites offer locational advantages to migrant entrepreneurs who have informally settled there. The use of qualitative data collection methods was to ground the insights in the views and experiences of community entrepreneurs. By so doing, it was possible to examine the range of differences and similarities between individuals and enterprise configurations within the communities. Quantitative data was collected at both community and individual levels using both retrospective and prospective approaches. The unit of observation was the enterprise (the fishing canoe or the furniture-making workshop), and all individuals working in the enterprise were interviewed, using a semi-structured questionnaire.

Case Study 1: The community of Fishermen

The Quest for 'Citizenship' Through Residential and Economic Rights

From a historical standpoint, it is difficult to trace back in a quantitative manner the trends of the settlement patterns within the fishermen community. However, oral sources tend to establish that the first stages of settlement go back to the end of the 1960s. These sources are matched by cross-cutting specific historical events, which tend to establish that the first contingents of migrant fishermen arrived about that time. The immigration flows were small in numbers, and this pertained to a slow rate of demographic growth of the community. The first waves of migrants were predominantly male as this labour-related mobility was primarily viewed as a temporary move. The fishing community has now expanded from the small coastal bay in the north of the present site where the first contingent of migrants settled,¹ to the Songolo stream, further south.

Though relatively small, the migrant fishermen from West Africa have stood apart for a variety of reasons. Historically, they were noticeable because they were not easily localisable in terms of geographical origin. The first colonies of migrants were seen as originating from Porto Novo (a city region in the coastal area of Benin, formerly Dahomey). This may be one reason why the first settlers were called *Popo* (derived from Porto) by the local people (Bøe 1999). Thereafter, as the settlement grew, this name became Dassa. Despite a certain willingness to be assimilated into the local society, as indicated by their ability to speak the two main local languages, foreign migrants remain a group apart. The migrant economy they developed over the past years has tended to expand within a confined ethnic enclave. This social differentiation (one would see it as a marginalization) has tended to persist. As a result of this continuing marginal status, these immigrants have remained vulnerable to social pressure, despite their important economic position in the coastal fishery industry.

Somewhat surprisingly, one of the most difficult facts to ascertain about the immigrant population is its legal status and its size. It is established that although they, if not the larger majority, have established permanent stay, obtaining a residence permit (*carte de séjour*) remains a source of major concern. Population estimates vary from as low as 450 to as high as 2,500 fishermen. While the fact that no comprehensive community survey or census has been attempted in over three decades might account for the wide range, these estimates often have more to do with hidden agendas than with a lack of statistical data. Though they enjoy a dominant position in the artisanal fishing industry, immigrants form only a small percentage of the population living in the city of Pointe-Noire. The enumeration I conducted in December 2005 arrived at an estimation of 1,167. However, this figure was certainly well below the true number, since even the community leaders in the area – who have their own reasons for minimizing their presence because of threats associated with over fishing – estimated that there were approximately far more members of the community at that time. The exhaustive enumeration of membership is also affected by the way it is actually conducted by local representatives. Their registers tend to collect information from only the heads of households (*chefs de famille*). Given the sex and age ratios of migrant populations, it is likely that adult male heads of households are certainly more represented than women and children in the registration. The only official count of the migrant population attempted so far was an enumeration during the 1984 census of population and housing that recorded 1,100 adult individuals of whom 62 per cent were males. Moreover, since immigrants have generally been wary of official scrutiny, there were undoubtedly many who tried to evade registration, raising further questions about the reliability of registration figures. In addition, this figure did not include several thousand fishermen (first settlers) who had become Congolese citizens.

Aside from the statistical inadequacy of the various data, there are often unspoken considerations at stake in the different estimates of the fishing population which further undermine their validity. Viewing their population size as a weapon for expressing their holdings on the beach, representatives from the local ethnic groups have at times issued overstated estimates of the size of this community. Against this, however, leaders of the fishing community, seeking to minimize the perceived threat, have tended to provide much lower estimates.

Ethnic Cohesion and Social Expansion Through Migration Network

One of the most interesting features of the fishing community is its cohesive nature. Nearly all the immigrants have come from the coastal region encompassing three countries – Benin, Togo and Ghana – and have in turn settled in two particular locations along the beach on the fringe of the city. Co-ethnic members (family and friends) emigrated bit by bit from a given area and clustered together in the same

plot (concession). Fellow country communities have also tended to aggregate in certain parts of the surrounding coastal localities, but the two sites remain their main locations. Most of the current immigrant population belongs to families originating from Benin. An important reason for this geographical dominance is that Benin has traditionally been the most anchored in the traditional fishing of the city. Moreover, that country has a locality, which is especially known for its local residents having a high propensity to emigrate in order to escape from poverty. According to the information gathered, that particular locality hosts wealthy returnees from Pointe-Noire who were involved in fisheries. Poverty, coupled with word-of-mouth stories about successful migrants, help to explain why people would choose to emigrate to Pointe-Noire rather than remain in the land of their birth. The presence of successful and wealthy returnees from Pointe-Noire may explain why recent emigrants from Porto-Novo would have chosen to go to Pointe-Noire rather than stay.

The most important reason that so many fishermen have come from Benin is that once a few individuals from this region established, both professionally and residentially, they encouraged further emigration of relatives and friends from their home areas. In addition, as most of them arrived in their early ages of adulthood, after a migrant was settled with a possession of plot, he often had his relatives at home arrange a marriage for him, almost always to someone from the same area. Thus, one a small kindred group began to form, it would grow considerably as more and more people emigrated from the same area to join relatives in Pointe-Noire.

A significant migration of fishermen settlers from other West African nations has also taken place over the past years. For the most part, these have families of second or third generation African residence. They have mainly come from countries such as Gabon and Equatorial Guinea, after these nations began implementing tough controls aimed at specifically restricting illegal immigration. Settlement of immigrants within Pointe-Noire has focused on that part of the coastal line formerly settled by local fishermen up to the sixties. One reason for this concentration in that particular area is that it facilitates access to basic infrastructure and markets. In addition, it is relatively secure in terms of providing some protection to communities through the presence of nearby military camps. For historical reasons, the fishing communities have always had some concerns about the possibility, although increasingly uncertain, of xenophobia-driven tension with the locals as this has happened in the past. Adding to this likelihood is the persistent concern that they may be evicted from the place where they are presently running their fishing businesses. To put this threat of eviction in its historical context, it is important to briefly retrace some of contemporary events that preceded the move to their present settlement. Although a detailed account is given in Tati (2002), a recapping of these events helps understand the significance

of land (for livelihoods) in the struggles for citizenship for those particular groups in the urban African context.

Negotiating Strategies in Space Occupancy for Livelihoods and Representation in the City

Since the early 1980s, the community of migrant fishermen has always been at the midst of a latent eviction and dispute over the occupancy of the sites where fishing activities are located. This dispute started with the development of an industrial plant by a multinational oil-company close to the settlement of the migrant fishermen. With the agreement of the city authorities to which a substantial financial package was given to downplay the risks of environmental damage, the oil company undertook the construction of a chemical laboratory for conducting experimental analyses related to the tapping of off-shore oil. Also, it developed an industrial plant for the construction of oil-jackets used for high-sea platforms. The development of the industrial site required a very large space of the beach. The company wanted to take advantage of both the infrastructural facilities which were already in the area, such as the presence of good quality access roads to the main parts of the city, the supply of electricity and water, and the proximity of the site to the city harbour.

In practical terms, arrangements were easily settled with a minority of local residents who were entitled to compensation. For most of them, the oil-company provided financial compensation for their housing property including the cost incurred by the owner in land purchasing. The amount of this compensation was in the first instance assessed by the house owner, and thereafter reassessed by a team of experts working for the company. After negotiation between the house owner and the team, an amount was eventually agreed between the companies. As most housing properties were still in the phase of construction, their values were worked out as gross estimates by the owners who did not refer to independent expertise in the assessment exercise.

As for the fishermen who were more or less linked to the fishing industry in the area, the method of compensation was not as straightforward as it was for the house owners with property title. The negotiation was harsh as the oil-company wanted a very large area of the beach for its planned industrial activity, which could also satisfy its needs for future industrial expansion. There was considerable resistance from many of the fishermen to accepting any form of compensatory scheme that excluded relocation to an area relatively close to the major centres of economic activity in the city. However, this resistance must not be understood in the sense generally reported in the literature on environmental conflict between industrial companies and grassroots communities in the Third World (see, for example, Guha 1989; Peluso 1992). In effect, it was neither a resistance aimed at maintaining space occupancy for their livelihoods nor was it a resistance to the

state authority's decision to evict people from the place they illegally occupied. It was basically resistance to the proposition made by both the city authorities and the oil-company to relocate them to a very remote area of the beach where they could no longer enjoy the proximity to the central places of the city. Besides, they expressed discontent with regard to the amount of financial compensation which the oil-company agreed to pay them.

To make their claims heard, they organised themselves in an association of untitled plot owners with the purpose of achieving a positive outcome in the negotiation. To strengthen their voice, a coalition with locals (fishermen and non fishermen) who did not have titled property was established. A group of individuals (migrants and non-migrants) from the coalition was mandated to negotiate with the municipality officials the terms of relocation. From a strategic standpoint, the coalition was a very useful instrument in the negotiation as it gave the community a platform for legitimizing their demands. For instance, the importance of the fishing activity was put forward in terms of its contribution to the supply of fish to meet the consumption needs of the city. In relation to that, the group stressed that this activity should have easy access to the main marketplaces of the city. Also emphasised in the negotiation process was the problem of the lack of any other space large enough to contain the community living on the beach apart from the area close to their current location. It should be said these arguments were to a great extent supported by the environmental reality prevailing along the beach. Thus, the only site for their relocation was beyond the area allocated to the oil refinery. In spatial terms, this site was part of the rural area surrounding the city of Pointe-Noire. For fishermen from West Africa, relocation beyond the refinery would have meant heavy costs to meet for the transportation of fish to the major market places and the loss of some of their customers who were buying fish daily on the beach. In addition to these potential negative effects, some security-related concerns also motivated foreign fishermen to reject their relocation to the site proposed by the city authorities. As mentioned in a previous section, the area which was to be occupied by the oil-company was close to a Gendarmerie base. This proximity was perceived by fishermen as an element of protection whenever their lives were threatened by xenophobic attacks like the one they experienced in 1977. Relocation to a remote rural area would have meant greater physical vulnerability to such a threat. The fishing community in the negotiation process openly expressed this concern. Foreign fishermen made it clear that relocation along the lines suggested by both the city authorities and the oil-company would affect the performance of the fishing industry.

The common ground consolidated the demand for the right to stay in the sites for the informal settlers. Gradually this right gained a collective voice within the fishing community in the bargaining process over resettlement. The advantages derived from the coalition, were not interpreted in occupancy terms for all groups. For the representatives, this coalition was also an opportunity to make money as it implied a larger number of beneficiaries of the financial compensatory scheme.

As the beach committee was speaking on behalf of all the fishermen living in the area, the sharing of the compensatory financial scheme was its responsibility. The committee, on the basis of a community inventory conducted for the circumstances, had to work out the sum of money each fisherman was entitled to. As in most cases of this kind, rent-seeking motivations tended to guide individual behaviour. In their positions as representatives, members of the beach committee had a large room to manoeuvre with regard to the amount of money that was retained from each fisherman. As for fishermen, the coalition was an indirect mechanism of negotiation as their status as foreigners occupying a public space did not allow them to negotiate directly with both the city authorities and the oil-company. In reality, the financial compensation was not their first concern as they were earning enough from their fishing activities. They were mostly concerned about the prospect of being resettled in an isolated area. For some, the fear came from the uncertainty about their entitlement to any plot of land at all after eviction. In legal terms, they had no right to claim compensation as they had no property title. The only valuable option was to rely upon the capacity of the beach committee to negotiate successfully with the authorities. This was the attitude adopted by the leaders of the community of foreign fishermen.

In the end, this coalition revealed itself as an effective instrument of negotiation with both the city authorities and the oil-company. An important concession was made to the advantage of the coalition, which authorised them to relocate both their housing and economic activity in the space they were bargaining for. The authorisation was granted on provisional terms as the beach remains the property of the Harbour authority represented by the *Agence Transcongolaise de Communication*. In fact, this institution played a crucial role in reaching this concession. Some of the affluent members of the beach authority used their social and kinship ties in high position within the ATC to persuade the city authorities to accept their demand. In 1983, all the parties involved in the negotiation process finally agreed their resettlement to a space close to the oil-company. However, this proximity to the oil-company shaped new behaviours with regard to housing conditions and economic practices among the foreign fishermen as will be documented later.

Characteristic Pattern of Land Subdivision and Housing Development

Land subdivision and house construction of each individual plot are the major events in the ongoing land development process within the settlement of migrants. Actually, land subdivision on the beach is carried out by local representatives who in the course of time and absence of any regulation, have come to see themselves as legitimate landowners. In the past, the representatives were mainly from the local ethnic group, *Vili*, which settled there before the arrival of migrants. With the passage of time, some of the established migrants have become involved in

the local politics and are participating in the committee of representatives. They are not elected, but refer to their duration in the area and, to some extent, their citizenship as Congolese, to establish a *de-facto* community leadership. Tracts of land have been subdivided into small plots and sold at prices which have been varying in the course of time. A large proportion of land subdivision occurred between 1978 and 1990 when the multinational oil company developed an industrial plant in the area. Entry of these plots is through informal subdivision, with no prior approval from the municipal development authority. From a technical standpoint, the zoning is conducted in a very simple way with blocs of housing separated by only two unpaved streets crossing the area from one end to another. Each street leads straight to the beach. These streets are wide enough, and this facilitates the circulation of cars or small vans in the area. No public primary school and health centre are operating within the settlement. But the fishermen take advantage of the facilities which are near their settlement. Once the plot has been allocated, construction takes place immediately as in almost all cases, precarious material is used to erect a dwelling unit. The dwelling unit is generally built as a courtyard (in French *concession*, in the same style as in most parts of West Africa), a multi-household structure delimited by a fence, inside which some other income-generating activities may be operated. One of these activities is fish smoking which provides substantial cash to migrant women. Once a plot has been acquired, the new owner has to resort to the traditional solidarity to construct a concession. The established migrants play a facilitating role, not only to obtain some financing for fishing equipment but also in housing construction. In these subdivisions, plot development takes place in a discontinuous manner, thus ending in sporadic development. This puts the local authority in a difficult position as proper development takes place on most tracts of land, much later. For most migrant settlers, they are confronted with the problem of non-availability of services, especially that of sanitation and garbage collection. During the fieldwork in December 2005, it was observed that there were several piles of uncollected garbage along the beach. The local authority has been unable to provide this type of service because of the spontaneous nature of the settlement.

The expansion of land subdivision along the beach, which goes back to the 1960s, has considerably slowed down in recent years due to shortage of space. The influx of migrants combined with an increasing natural growth has led to a situation of excessive densification in the area. Since the end of the 1990s, land subdivision has shifted outside the beach limits, and has spread to the surrounding wetlands, riverbeds and mangrove areas. These new sites have been dried up through deforestation, cleaning and water drainage. Most of the time, the drying up has been achieved by burning part of the flora cover in the area. This pattern has resulted from the behaviour of all three stakeholders, i.e. land owners, community leaders, and buyers in the land market, weakly controlled by both the ward district (within the jurisdiction of *Mvouvou commune*) and the Pointe-Noire municipality, a body

which is responsible for land subdivision in the city. The very nature of the land market, characterised by informality and the heterogeneous nature of the groups in the area, has led to the fragmented and dispersed pattern of growth by unplanned subdivision which can only be called a sprawl. By nature, the different land parcels along the beach have unique characteristics, including size, location and accessibility. Sites with such favourable features as roads, accessibility and proximity to social infrastructure were taken up in the early phase of settlement expansion while others were left out. As easily accessible land has been quickly acquired, subdivision activity has been making inroads into the interior wetland mangrove area and nearby river banks – and infilling has taken place on land between rivers. This process is evidently now occurring around the existing subdivisions with a tendency to spread over the area where a refinery plan is located. This area provides transportation infrastructure that facilitate access to markets. Most the new land tracts in wetland areas are considered unsuitable for residential use as they are over-endowed with water-logged areas. Besides, as they are located close to the beach, such lands are low-lying and therefore liable to flooding during the rainy season. In these areas, groundwater is very saline and unfit for domestic purposes. Furthermore, given the substantial development of an industrial settlement, pressure has increased to control this informal encroachment onto wetlands, not only because of its unsuitability to housing, but also for the conservation of the local ecological system.

The Development of Coastal Artisanal Fishery and its Relations With Land Appropriation

The male immigrants to Pointe-Noire make their living as fishermen, and high-sea fishing remains an important activity for them today. Acquisition of land for housing has allowed some of them, though only a small number, to operate consumer retail business. Many of the operating businesses are shops selling a variety of consumer goods from sugar and cooking oil to liquor and cigarettes. One natural outgrowth of this artisanal fishing industry has been a movement into the wholesale and distribution business of fish across different places within the city and the other major cities in the country. This has resulted in the physical extension of the site as an informal fish market has been erected on the outskirts of the settlement. Many fishing canoes catch stocks large enough to be able to sell wholesale to local traders, who, in turn, resell in smaller quantities to market dealers and itinerant suppliers. At the other end of the commercial stream, numerous female migrants have also become involved in fish selling. They predominantly run their activities in the marketplace.

In the course of time, fishermen from West Africa have been the major actors in the spectacular development of artisanal sea fisheries (Jul-Larsen 1994). Nationals from Benin dominate the active population of immigrants, though it is not easy to establish the origin for particular individuals. The 1984 census indicated that nationals from

Benin represent 93 per cent of West Africans working in the artisanal fishing industry. However, it is worth pointing out that there is a small community of Congolese fishermen from the local ethnic group *Vili* which participates in the fisheries. The importance of their participation in terms of the catch is of a lower level compared with the production of the West African fishermen. The gap in the performance of these two communities is likely to be explained by the numbers of individuals participating and the economic organisation of the fishing activity in each group. West African fishermen are in a better position because of their numbers and well elaborated organisation. The techniques of coastal fishing used by these fishermen are more intensive than the ones used by Congolese fishermen. Those techniques allow them to achieve large catches of fish. Canoes are wider and can generally reach a length ranging between 8 and 15 metres. Various types of nets are also used in order to take advantage of both off-shore and deep sea fishing grounds. Variety in size of nets also allows them to catch specific fish that appear seasonally like harangues or those found on the edge of the continental shelf. Congolese fishermen, on the other hand, use canoes which cannot contain more than two persons. Their nets have a more limited capacity of fish intake in addition to being poorly maintained. Because of the fragility of their canoes, they are constrained to fish near the shore. This seriously limits their capacity to increase the volume of the fish catch. Beach seining is the widely used fishing method among Congolese fishermen.

Although operating in the informal sector, the management of a canoe's activity reveals an impressive level of socio-economic organisation. The number of workers ranges between five and eight persons. The system of tasks and catch division is equally well elaborated. Individual attitudes are more favourable to both savings, which in the end are transferred to the country of origin, and investments in the improvement of the existing technical capital. Marriage is perceived as a mechanism for participating in the labour force reproduction and in the gender division of labour. Fishermen from West Africa work in groups led by a leader selected on the basis of experience in the area and the fishing industry. Group formation often requires calling upon skilled fishermen from the country of origin by financing trip costs to the Congo. The labour division is also visible between men and women or between age groups within the community of foreign fishermen. Family formation and marital relations contribute considerably to this division of labour. In a large proportion, fishermen from West Africa are heads of household carrying responsibilities for wives and children. Women and children participate in tasks that are different from sea fishing. A different pattern is observed among Congolese fishermen with regard to marital status. Apart from a few cases of married individuals, they are overwhelmingly single, and the majority are over 40 years old.

Within the foreign community, women are actively involved in smoking fish which they sell at the central market place of the city. Smoked fish is also wholesaled to Congolese traders who retail it in other urban centres or rural

localities. The fish is generally sold on a daily basis either on the beach or in the market places of Pointe-Noire. With the increase in fish production, however, the practice of smoking fish has been introduced within the community of West African fishermen. This practice allows the transformation of the excess of fresh fish into a product that can be conserved longer. By so doing, the fish is not wasted while the added value is increased. Teenagers participate as well in the smoking of fish. However, they are more involved in seine fishing which allows them to fish occasionally and prepare some of them to eventually become professional fishermen. This is a mechanism of professional learning, which also serves to reproduce the labour force within the community.

Social Divisions around Land Possession within the Fishermen Community

The contemporary fishing migrant population of Pointe-Noire shows little evidence of conflict along national or regional lines. Indeed, established migrant families express very secular attitudes, reinforced by the possession of a parcel of land. This may also be related to the cohesion within the community around the legitimisation of their landholding, affirming their resistance to eviction and developing a sense of kindred citizenship as members of an easily identified migrant population. Although the most recent generation of immigrants have not been subjected to the xenophobia-motivated violence that erupted in the 1960s and 1970s, the likelihood of such an event has been internalised within the community and transmitted from generation to generation, as a motivation to develop this secular way of existence. Beyond this, though, there appears to be a concerted effort to downplay the significance of ethnic difference, and community leaders have contributed to instances of inter-ethnic platforms of dialogue, and of joint initiatives to develop their settlements. Nonetheless there are certain settlement patterns along wealth status. The most significant is that between owners of houses built with durable material, some of whom have now lived in Pointe-Noire for more than three generations, and the migrants who have not acquired a property of that type. These migrants are predominantly sheltered in houses built with precarious materials. The principal reason for this division is that most of the migrants in the latter category lacked the necessary entitlement to land for housing and other productive assets (such as fishing equipment) that had promoted the relatively consolidated wealth of the first settler migrants. Without this land acquisition, the recent migrants found themselves largely reduced to living in very precarious housing conditions. This situation, however, does not provoke resentment towards the better-established and generally better-off land property owners. For their part, the better-off owners assist the recent migrants to acquire land, as they regard them as contributors to the strengthening of the community's voice with regard to land occupancy. It should be noted that each of these two categories is itself subdivided in familial clusters. Though most

members of the established/non-established migrants know one another, evidently tolerate wealth differences, and share numerous business interests, they reserve their primary loyalties for their concessions or business partners rather than the community at large. Despite efforts by some community leaders to create an image of broad concordance in groups, networks of group solidarity are primarily defined along the boundaries of courtyard (concession) or canoe loyalties (often identical) and only secondarily by shared nationality or geographical origin. Broader associations, though, do serve as a means for arbitrating internal business or land conflicts among the members.

Accommodating Measures from the Municipal Authority in Response to Informal Space Occupancy

As indicated earlier, the public authorities responded in a conciliatory way to the claim made by fishermen to be resettled in a coastal space which offers some of the locational advantages the former site had. However, since this demand was agreed, the official authorities seem not to show any willingness to intervene directly in the management of the space allocated to the fishermen. The habitat is rapidly becoming a densely populated place without any attempt by the city authorities to regulate its dynamics. Only the oil-company is managing to contain the progression of the settlement within the boundaries permitted with regard to its activities. In that respect, the company is running a permanent supervision to prevent any invasion for housing purpose of the earthen path of about 10 metres which separates the edge of the fishermen housing area from the fence surrounding the company's activities.

To some extent, these concerns are supported by the evidence on the dynamics of housing. In fact, the lack of regulation from the official authorities partly results from the confusion actually prevailing between the city council and the Harbour authority which is part of the *Agence Congolaise de Transcommunication* as to which institution bears responsibility for the management of the coastal area. From a legal viewpoint, the Harbour authority in the city of Pointe-Noire is the institution in charge of managing or planning the development of the coastal area. Its responsibility covers both the sea and the beach line. However, the authorities in charge of the municipality of Pointe-Noire, and particularly the city council, perform a supra supervisory function with regard to the management of the coastal area. And this position is generally put forward whenever some opportunistic financial situations are at stake. Apart from these, the city council does not seem to be involved in the day-to-day supervision of activities taking place on the beach. From an interview I conducted with a senior official in the CCI, it emerged that the municipal treasury has revised its policy toward the economic activities of foreign fishermen because their enterprises are taxable. In the past, their fishing enterprises were classified in the informal sector, and were

therefore not taxable. But this classification turned out to be a fiscal mistake. The municipal treasury can enormously benefit from these fishermen. While their status of informal activity is recognised, the CCI, as a first step, is considering carrying out a survey of all fishermen in order to register them for tax payment. Thus, while both the city council and the Harbour authority argue that each is in charge of land use on the beach, the CCI claims that any economic activity taking place there falls under its competence.

Land acquisition enters in the project of concession construction for fish smoking in which women are actively involved. Foreign fishermen do not hesitate to bribe some members of the committee in order to get a parcel of land. Income derived from this operation is not registered by the municipal treasury as the use of beach occupancy for commercial purpose is not contemplated by the city authorities. The members of the beach committee are the sole beneficiaries of this lucrative land transaction. The real situation is that these authorities are totally ignorant of all the transformations taking place within the community of fishermen.

After this detailed presentation of both economic and occupancy patterns among the fishermen, we now turn to the second case study, namely, the wood-furniture makers.

Case Study 2: The Community of Wood-Furniture Makers

The Development of the Artisanal Wood-Furniture Manufacture

As indicated in the introduction, immigrants from the Democratic Republic of Congo (former Zaïre) are the main operators in this sector of activity where their leadership has gained grounds in recent years. The manufacturing of wood-furniture in the city of Pointe-Noire has experienced a significant rise following their occupancy of an urban zone which offers locational advantages from their economic perspective. During the last several years, wood-furniture makers have settled in an area which serves as a junction between the trading and business centre and the rest of residential districts of the city. It is a strategic zone from an economic standpoint, for not only it is very close to the central marketplace of the city, but it also offers commercial visibility with regard to the selling of furniture. Furthermore, the location is close to the major sawmills in the city which supply the furniture makers with a large variety of planks. Frequent flooding by the nearby stream has not discouraged the furniture makers from using the area for housing purposes. Housing construction is prohibited by municipal law, and occupancy has proliferated in an informal way in the area.

Foreign furniture makers have taken advantage of income-generating opportunities created by the rapidly growing demand from households in the city. Such a demand was largely unsatisfied by Congolese furniture makers due to

both low productivity and poor organisation. The economic behaviour of foreign furniture makers differentiates them from locals in three ways. . The first relates to their anticipation of demand by making available in advance and in large numbers the most needed products by the public, namely beds, tables, chairs, cupboards, armchairs, sofas, wardrobes, drawers, and so on. During week days, furniture of varying types and quality are exhibited publicly by the side of the largest avenue in the city in the area occupied by the community of immigrants. Prices are clearly indicated on each item. On weekends, furniture is exhibited for sale in a special space allocated for that purpose to all furniture makers of the city by the municipal authorities. However, foreign furniture makers seem to prefer selling their products at their actual place of activity (which is also their dwelling place) because this helps them avoid both direct competition with Congolese furniture makers and the loss of customers who may not have time on Sunday. From a general point of view, the pattern of production among Congolese furniture makers is driven by effective demand, in the sense that they respond to actual orders of furniture. Anticipation has never been their concern, and whenever this option is adopted, the number of pieces of furniture made available tends not to exceed one. From the consumers' standpoint, the anticipation of the demand through serial production as it is operated by foreign furniture makers offer the advantage of finding a ready-to-use product. This readiness saves the time generally required by frequent visits a customer has to pay to the furniture maker before the work is completed. Congolese furniture makers have got the bad reputation of taking too much time to complete work ordered by a customer. This reputation has turned out to be true in the majority of cases. On the contrary, furniture makers from the Democratic Republic of Congo are appreciated for their prompt completion of work.

The second aspect relates to the price for different types of furniture. From a general standpoint, prices of furniture made by foreigners are relatively low as compared with those for furniture made by locals. Prices are also flexible in the sense that the price as displayed on a piece of furniture is negotiable. This flexibility in pricing is locally termed *prix Magondo* (this term is derived from the popular language in the former Zaïre). As a way of comparison, the price ratio between furniture made by a Congolese and that made by a foreigner is about 2:1. This price competitiveness has been favourable to foreign furniture makers in terms of attracting customers.

The third aspect has resided in the organisation of the work in teams of three to six persons. By working in groups, foreign furniture makers can manage to overcome production constraints such as prompt delivery and the continuous supply of products. It is a practice which also increases the enterprise's productivity and its volume of profits. More importantly, working in groups is a distinctive mode of organisation which differentiates foreign furniture makers from Congolese furniture makers in the sense that the latter prefer to work alone.

The combination of all these aspects has resulted in the dominant position occupied by immigrants from the Democratic Congo in the furniture making sector. One cannot speak of competition between Congolese and foreign furniture makers as the latter are by and large performing more successfully.

Land Occupancy Patterns within the Community of Furniture Makers

From a general standpoint, the pattern of space occupancy for housing purposes in this community has been less strategically designed than it has been for fishermen. First, it should be mentioned that the settlement of furniture makers is quite recent as it goes back to the mid-1980s. Before this date, there were few migrants from the Congo-Democratic living in the area, but they were dominantly manual workers involved in carriage services using a two-wheel barrow. In relation to this type of work, those migrants were named 'pousseur' (pusher). Besides, these first settlers lived in rented rooms because accommodation was both cheap and close to the central marketplace of the city where the types of services they offered was particularly in high demand. The status of undocumented migrants coming from the Democratic Republic of Congo remains associated with an orientation to crime, especially robbery or burglary. This bad reputation has maintained this community in a position of a low-status group which has tended to increase their social marginalisation. They themselves tend to reproduce this public image by choosing to live in deprived areas where rent is cheaper and where they can preserve some anonymity. The permanent fear of expulsion by the authorities also contributes to this reproduction of social exclusion.

Wood-furniture makers took part in the more recent waves of migration, and naturally the social ties with the former migrants facilitated their settlement in the area. However, this pattern was not straightforward, i.e. from the place of origin to the actual location. There was an intermediary step which consisted of using the side-walk of the largest Avenue in the city as a place where to sell their furniture. The side-walk where this selling activity takes place is on the edge of the squatter settlement inhabited by *pousseur* migrants, and it is situated close to a roundabout linking the main roads leading to different parts of the city with the largest avenue leading the business city centre. It is an appropriate location in terms of visibility for the products they want to sell. The place is crowded because of people passing by to go either to the business centre or one of the densely populated neighbourhoods of the city. Besides, there are many activities taking place with a predominance of public services. The nearby central market place indirectly drives a few potential customers to inspect the furniture on display.

When the use of the sidewalk as a place for furniture display started, the furniture makers used the houses of former migrants in the area to store their products during the night. Progressively, they became renters in the area whenever accommodation became available. In fact, the need to live closer to the side-walk where the display

takes place motivated many to move in. With the intensification of the wood-furniture activity, as mentioned earlier, the neighbourhood became dominantly inhabited by this category of migrants. It should be said that this settlement was partly driven by the opportunistic behaviours of some native-born landowners. Letting houses to these migrants was seen by many landowners as a lucrative source of income.

In recent years, the pattern of settlement has entered a new phase. The substantial incomes they earn from their activities have led some to envisage settling permanently by becoming house owners. Many furniture makers have taken advantage of the self-built character of the area to develop land for housing. The procedure for land development is set by the neighbourhood committee. Anyone wanting to develop a plot of land on an unoccupied area of the river stream has to get authorisation from the neighbourhood committee. This authorisation is granted in exchange for an amount of cash. A land plot delivered in this manner has no legal tenure. But wood-furniture makers prefer to take the risk of paying for the authorisation to develop a parcel of land with the hope that they will not be asked by the city authorities to leave. Most of these migrants have no intention to return to their place of origin, namely Bas-Congo (former Zaire), where they led a poor life. They recognise that with the earnings from furniture selling, they are by far better-off than in their home country. With the time, their migration to Pointe-Noire has become permanent. This is reflected in the formation of family units with children born in the city.

One of the locational advantages offered by the squatter settlement inhabited by furniture makers is the proximity to a large sawing factory. The settlement is less than 500 metres from the sawing company. This short distance facilitates the supply of planks of varying quality they need to satisfy the demand from different customers. As planks cost cheaper when they are bought at the factory than when bought from retailers in the city, the furniture makers prefer this option. This frequently emerged in the conversations I had with a few wood-furniture makers. Also, the proximity reduces the cost involved in the transportation of planks from the factory to the workshop (which is also the accommodation). Depending on the quantity, a van or a lorry is not needed to carry the planks as either the shoulder or the head is used for that purpose. On the whole, the wood-furniture makers form an important pool of regular customers for the sawing factory which has been experiencing cash flow problems for some time. These problems have been paralleled by the decline of its activity.

What emerges from the foregoing presentation is that the expansion of housing in the space occupied is associated with the locational advantages it offers to wood-furniture makers. They can use the side-walk of the Avenue, which is a public space, for the display of furniture. This space increases the degree of contact with potential buyers due to the numerous prestige and commercial activities taking place in the area. The sidewalk is on the edge of a self-developed informal housing settlement where migrants from Congo (DRC) feel secure. The self-built

settlement offers some anonymity and is suited to their public image. Finally, both the side-walk and the squatter are close to a large sawing factory which supplies the furniture-makers with planks of varying quality. This proximity contributes to cost-reduction and increased production. As a consequence of this operation of cost-reduction, the furniture makers can produce different types of commodities which are sold at competitive prices on the sidewalk.

Responses from the Public Authorities to the Space Occupancy

Here a distinction has to be made between the space occupancy used for housing purposes and the occupancy of the sidewalk for commercial purposes. For the former, the attitude of the public authorities has shifted from forced eviction measures to *laissez-faire*. Eviction measures were also linked with the repeated flooding of the area during the rainy season which raised great concerns about individual lives in the squatter settlement. Heavy rain tended to result in casualties especially among children. For that reason, the authorities were more concerned with individual security than with tenure considerations. In the early years of site occupation, the neighbourhood authorities whose headquarter was close to the squatter settlement attempted to prevent people from settling there. One or more actions of eviction were implemented, but they failed to achieve what they aimed at – namely, to clear the area of unauthorised housing. With the growth of dwellers fuelled by continuous immigration from the Congo (DRC), the authorities adopted an attitude of *laissez-faire* stressing ‘the responsibility of households living in the squatter settlement with regard to the risk they face in the situation of heavy flooding’. However, no legal tenure is attributed to the house owners, whatever the house constructed. The squatter settlement has never been zoned by the municipal cadastre services, and boundaries of each plot are established on consensual basis between neighbours once the parcels have been developed according to the procedures previously mentioned. Any operation of zoning by the cadastre services may result in a chaotic situation as no house owner has proper documents justifying where the boundaries of his or her plot start and end.

As for the side-walk used for the display of furniture, a more constructive approach seems to replace the coercive actions adopted at the first moment of occupancy. Instead of sending brigades of police periodically to prevent furniture makers from using the sidewalk in an anarchic way, the neighbourhood authorities (*Arrondissement Numero 1*) found a way ‘of cutting the peach into two pieces’, so to speak. It was decided to use one half of the sidewalk for the display of furniture, and the other half for the circulation of walkers. In addition, the city authorities established the payment of a fee by any furniture maker using the half-side for commercial display. The fee is charged on a daily-display basis, and the amount paid is quite acceptable from the point of view of furniture makers. The funds

generated by the payment of fees benefit the neighbourhood council treasury. In turn, this arrangement with regard to the use of a public space has legitimised the appropriation of the sidewalk for commercial purpose by the wood-furniture makers. The positive effects on their small enterprises are significant as the sense of security gained from this official recognition serves as a catalytic force. The supply of furniture from workshops situated at a very short distance from the sidewalk has also been boosted. As other migrants are settling in the squatter, adding up to those already there, the space occupied in the sidewalk along the avenue is expanding. The municipal authorities are more attracted by the payment of daily fees than by acting toward the containment of furniture makers. And, presumably, this status quo will remain unchanged for a few years to come until the situation reaches a point which may need public intervention.

Conclusion

The two case studies examined in this chapter have provided insights into the relationships between occupancy of land by operators in the unregistered economy and insertion in a niche market in the city of Pointe-Noire. By so doing, it has shed light on some mechanisms associated with informal space appropriation in relation with African immigrant entrepreneurship in the urban context. Beyond the specificities associated with the contextual logic underlying the dynamics of this appropriation, it is possible to discern some convergent or divergent patterns between these two communities in their struggles for citizenship.

Firstly, a temporal dimension is very present in the process of land appropriation in the sense that it is not predetermined sequentially in time by the actors involved. Land appropriation is inextricably associated with the variation in local circumstances, which themselves dictate to the actors which strategy or strategies to adopt in order to take advantage of these circumstances. The settlement of foreign fishermen has, for instance, been shaped by some events whose timing they could not predict. Yet fishermen moulded their aspirations in relation to the stakes linked to the spatial relocation. A second aspect is the capacity for adaptation or adjustment showed by each group of actors to the actual or changing context with respect to their livelihoods. Each community has responded actively in its own way according to constraints and opportunities arising in its livelihoods environment. Adjustments in behaviours are reflected in the adoption of new fishing methods, the gender division of work and the transactions associated with this. Third, housing, as a functional unit for reproduction and production, is an integral part of this process of appropriation, being the place where the economic activity is conducted. This integration is not just expressed in physical terms but should be seen as a notion which cuts across boundaries of cultural, social and economic domains through which actors are interrelated. In this respect, the financial reward gained from positioning in the niche economy depends upon the

occupancy of a particular territorial space which offers some locational advantages in addition to being used for housing purposes. In turn, domestic life is improved through the preservation of a productive exploitation of the niche market into which the actors are inserted. Fourthly, the positive public image derived from the good performance of the economic activity is an important facilitating factor with regard to space appropriation. It attenuates tension which may generate from considerable expansion of both housing space and economic activity.

The relations between the municipal authorities and the actors at the city or local level are, interestingly, constructed around the imperative to accommodate conflicting interests, reflecting in some way the aspirations or the objectives pursued by each party involved in the negotiation over the space occupied. While the former perceive the relations in short-term financial gains (payment of taxes or fees to pay for occupancy), the latter perceive these relations rather in long-term spatial and economic positioning. However, this perception is not purely a matter of rational or free choice but it is strongly influenced by the culture into which people have been socialised and the modes of expression that are available to them. In fact, both communities studied are permanently involved in the construction of their livelihoods space, and their economic and social behaviours. To them, the housing space is neither static nor neutral as it also has locational advantages. The linkages between domestic, economic, cultural and social spaces identified in this study lend support to the view expressed by Kalepini and Zeleza (1999) who claimed that 'in Africa, spaces are produced socially and they produce the social; in as much as space is socially constructed, the social is spatially constructed too'. This mutual effect has been highlighted in the article. Further research should be devoted to documenting the spatial logic of informal activities.

Note

1. Locally named Mbou MvouVou, near the presidential palace

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Land in the Struggles for Citizenship in Africa

Le foncier dans les luttes pour la citoyenneté en Afrique

The variety of land questions facing Africa and the divergent strategies proposed to resolve them continue to evoke debates. Increasingly, in response to the enduring problems of land tenure, there are land movements of all shapes and orientations, some reformist and others quite revolutionary in their agenda. However revolutionary, land movements have tended to ignore the land tenure interests of women, pastoralists, youth and indigenous people. Several of these longstanding and emerging issues in land tenure include the role of the state in land tenure reforms; urban land questions, the nature of land struggles and movements; and, the impact of land tenure developments on particular social groups and countries. An overarching concern is the extent to which land rights are being commodified, through the conversion of land held under customary tenure systems into marketised systems. The consequences of this include growing land concentration, land tenure insecurities, diminishing access to land by various sections of society, including the poor, women and less dominant ethno-religious groups.

This volume brings together different studies on Africa's land questions exploring emerging land issues on the continent in terms of the wider questions of development, citizenship, and democratisation. The chapters discuss the land question through a variety of themes. Some focus on the agrarian aspects of the land questions, while others elucidate the urban dimensions of the land question.

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